

SC NAACP v. Alexander,
D.S.C. Case No. 3:21-cv-03302-MGL-TJH-RMG

Exhibit A

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

4 -----x
THE SOUTH CAROLINA STATE
5 CONFERENCE OF THE NAACP

6 and

7 TAIWAN SCOTT, ON BEHALF OF HIMSELF
8 AND ALL OTHER SIMILARLY SITUATED
PERSONS,

Case No.
3:21-CV-03302
JMC-TJH-RMG

9 Plaintiffs,

10 Vs.

11 THOMAS C. ALEXANDER, IN HIS OFFICIAL
CAPACITY AS PRESIDENT OF THE SENATE;
12 LUKE A. RANKIN, IN HIS OFFICIAL CAPACITY
AS CHAIRMAN OF THE SENATE JUDICIARY
13 COMMITTEE; MURRELL SMITH, IN HIS OFFICIAL
CAPACITY AS SPEAKER OF THE HOUSE OF
14 REPRESENTATIVES; CHRIS MURPHY, IN HIS
OFFICIAL CAPACITY AS CHAIRMAN OF THE
15 HOUSE OF REPRESENTATIVES JUDICIARY
COMMITTEE; WALLACE H. JORDAN, IN HIS
16 OFFICIAL CAPACITY AS CHAIRMAN OF THE HOUSE
OF REPRESENTATIVES ELECTIONS LAW
SUBCOMMITTEE; HOWARD KNAPP, IN HIS
17 OFFICIAL CAPACITY AS INTERIM EXECUTIVE
DIRECTOR OF THE SOUTH CAROLINA STATE
18 ELECTION COMMISSION; JOHN WELLS, JOANNE
DAY, CLIFFORD J. EDLER, LINDA MCCALL,
19 AND SCOTT MOSELEY, IN THEIR OFFICIAL
CAPACITIES AS MEMBERS OF THE SOUTH
20 CAROLINA STATE ELECTION COMMISSION,

21 Defendants.

22 -----x
STENOGRAPHIC REMOTE VIRTUAL DEPOSITION
23 CHARLES TERRENI
24 Tuesday, August 16, 2022
25

August 16, 2022

9:56 a.m.

T R A N S C R I P T of the
stenographic remote virtual deposition
of CHARLES TERRENI, pursuant to the
Federal Rules of Civil Procedure, held
remotely on Tuesday, August 16, 2022,
commencing at approximately 9:56 a.m.
(EST), reported by and before Erica
Ruggieri, a Registered Professional
Reporter, Certified Court Reporter,
and Notary Public of the State of New
York and New York.

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APPEARANCES OF COUNSEL:

(Via Videoconference)

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THE SOUTH CAROLINA STATE CONFERENCE OF

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APPEARANCES OF COUNSEL: (Cont'd)
(Via Videoconference)

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SENATE; LUKE A. RANKIN, IN HIS OFFICIAL
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TERRENI

C H A R L E S T E R R E N I ,
called as a witness, having been
duly sworn by a Notary Public, was
examined and testified as follows:

EXAMINATION BY

MS. ADEN:

Q. Good morning, Mr. Terreni.
I am Leah Aden. It's nice to see
you.

A. Nice to see you again.

Q. I am currently, as you may
know, representing Plaintiffs in the
current challenge to certain
congressional districts and
Plaintiffs are the South Carolina
NAACP and Mr. Tai Scott.

Do you mind going ahead and
stating your name and spelling it
for the record, please?

A. Certainly. It's Charles,
C-H-A-R-L-E-S. Terreni,
T-E-R-R-E-N-I.

Q. So the correct
pronunciation is Terreni?

1 TERRENI

2 A. That's fine.

3 MS. ADEN: And I'd like to
4 take a moment and ask everyone who
5 is representing parties in the case
6 to also go ahead and state their
7 name for the record beginning with
8 counsel for the plaintiffs.

9 MR. CUSICK: Good morning.
10 This is John Cusick also with LDF
11 on behalf of the Plaintiffs.

12 MS. ADEN: Mr. Gore, would you
13 go next, please.

14 MR. GORE: Sure. John Gore
15 for the Senate Defendants.

16 MR. TRAYWICK: Lisle Traywick
17 of Robinson Gray also for the
18 Senate Defendants.

19 MS. TRINKLEY: Jane Trinkley
20 with Burr & Forman for the Election
21 Defendants.

22 MR. MATHIS: Andrew Mathias of
23 Nexsen Pruet for the individual
24 House Defendants.

25 MS. ADEN: And I believe just

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TERRENI

for your knowledge, Mr. Terreni,
that Ms. Nygord is on the staff
team for one of the plaintiff
counsel, I believe the Senate
defendant team. You may be
familiar but just so you know who
is on the line and I believe that
is everyone.

Q. Mr. Terreni, you are a
lawyer; is that correct?

A. Yes, ma'am.

Q. But you are represented
here today. Is that also correct?

A. It is.

Q. And who represents you?

A. John Gore and Lisle
Traywick.

Q. And they are with the Jones
Day law firm?

A. John Gore is with the Jones
Day law firm. Lisle Traywick is
with, they changed their name
recently, maybe he will refresh my
memory. Robinson Gray.

1 TERRENI

2 Q. Gray?

3 A. Yeah.

4 Q. Have you taken depositions
5 before?

6 A. Yes.

7 Q. About how many times?

8 A. Couple dozen at least.

9 Q. So just so that we are on
10 the same page despite your having
11 taken depositions before, I'm going
12 to identify some basic ground rules
13 for how this deposition will proceed
14 today so we are on the same page.

15 You have been sworn in so you
16 are testifying under oath which
17 means that you are testifying as if
18 you are before a judge in a
19 courtroom with the same duty to
20 answer questions truthfully.

21 Do you understand?

22 A. Yes.

23 Q. And a court reporter,
24 Ms. Ruggieri, whose name I may
25 already mispronounced already is

1 TERRENI

2 transcribing this deposition and so
3 with that in mind if you and I both
4 could try to please speak audibly
5 and clearly and I will try to speak
6 slowly.

7 Please refrain from nodding or
8 shaking your head so that we have a
9 clear transcript. And if I ask a
10 question that you do not understand
11 or you need me to repeat, I'm happy
12 to do so. I will do my best to
13 rephrase. If I ask you a question
14 and you answer the question,
15 however, I will assume you
16 understand my question.

17 Do you understand those basic
18 ground rules?

19 A. Yes, ma'am.

20 Q. Okay. There may be
21 attorney objections. Though we are
22 the primary people who should be
23 talking today in addition to the
24 court reporter who may need
25 something from us, your counsel may

1 TERRENI

2 object to my question and the
3 objection will be noted for the
4 record. But you still must provide
5 an answer unless you are instructed
6 not to.

7 Do you understand that?

8 A. Yes, ma'am.

9 Q. Okay. Is there any reason
10 why you may be unable to understand
11 or answer my questions today?

12 A. None that I know of.

13 Q. Okay. If at any time you
14 want to take a break, and I'll try
15 to take them every once in a while,
16 please let me know. We will get off
17 the record at some point and talk
18 lunch and make sure that you have
19 what you need to proceed. The only
20 thing I ask is that before we take a
21 break that I am able to complete my
22 question and you complete your
23 answer.

24 Does that make sense?

25 A. Yes, ma'am.

1 TERRENI

2 Q. Okay. For today's
3 deposition where are you physically
4 located?

5 A. In my office at 1508 Lady
6 Street in Columbia.

7 Q. Okay. Is there anyone else
8 in the room with you?

9 A. No, ma'am.

10 Q. Did you bring any materials
11 with you for the deposition?

12 A. I have two screens and on
13 my second screen I have the exhibits
14 that you submitted for my
15 deposition.

16 Q. Do you have any hard copies
17 of those in front of you?

18 A. No, ma'am.

19 Q. And did you take any notes
20 on any of the soft copy exhibits
21 that are on your screen, any
22 comments, put any comments, markup
23 the documents at all?

24 A. No, ma'am.

25 Q. What is your understanding

1 TERRENI

2 of this lawsuit?

3 A. I understand the plaintiffs
4 are challenging the configuration of
5 certain congressional districts in
6 the State of South Carolina drawn in
7 the last cycle, that it is generally
8 an allegation of racial
9 gerrymandering.

10 You'll have to remind me as to
11 the exact districts you challenged
12 but I know it's not District 6. It
13 probably is 2, 1 and 5. But I could
14 stand corrected.

15 Q. So that's correct, those
16 are the challenged districts, 1, 2
17 and 5.

18 You mentioned a racial
19 gerrymandering claim. What do you
20 understand that to mean?

21 A. Well, what I understand a
22 racial gerrymandering claim to mean
23 is generally a claim of improper
24 racial motivation as expressed in
25 Shaw versus Reno. Though race was

1 TERRENI

2 the predominant factor in the
3 redistricting decisions that were
4 made or the challenges.

5 Q. Have you ever brought or
6 defended against a racial
7 gerrymandering claim?

8 A. No.

9 Q. Do you know what an
10 intended racial discrimination claim
11 is?

12 A. Generally speaking, it's a
13 claim that is brought on the basis
14 that an enacted plan was enacted
15 with improper racial motives
16 regardless of its defense.

17 Q. Do you see a racial
18 gerrymandering claim and an
19 intentional racial discrimination as
20 equal, the same claim?

21 A. Well, a racial
22 gerrymandering claim does not have
23 to have a direct evidence of intent.
24 So, no, I don't them as equal,
25 although they would often be

1 TERRENI

2 related.

3 Q. In the context of a racial,
4 intentional racial discrimination
5 claim in a redistricting action, do
6 you under- -- what would that mean
7 to you?

8 A. That race was the
9 predominant intent -- that racial
10 discrimination or disadvantaging a
11 racial minority was the intent of
12 the redistricting effort.

13 Q. And in an intentional
14 racial discrimination claim as
15 compared to a racial discrimination
16 claim do you understand that intent
17 has to be predominant as well or can
18 it be a purpose motivating the
19 action?

20 A. I'm sorry, could you
21 restate that question.

22 Q. Yes. In an intentional
23 racial discrimination claim as
24 compared to a racial gerrymandering
25 claim --

1 TERRENI

2 A. Yes, ma'am.

3 Q. -- does race have to be the
4 predominant purpose or can it be a
5 purpose animating the decision? Do
6 you know one way or other?

7 A. My understanding is it
8 would have to be the predominant but
9 I say that with -- you know. I have
10 faced racial gerrymandering issues
11 in redistricting but I don't have
12 much experience with intentional.

13 Q. So that last claim,
14 intentional racial discrimination,
15 have you ever brought and/or
16 defended against an intentional
17 racial discrimination claim whether
18 in the redistricting or
19 nonredistricting context?

20 A. I don't believe so.

21 Q. Have you ever familiarized
22 yourself with the Arlington Heights
23 case?

24 A. It's been a while. I mean
25 I have read it, I'm familiar with it

1 TERRENI

2 but it's been a long time.

3 Q. Now, you mention that you
4 have never brought or defended
5 against a racial gerrymandering case
6 but I believe you just mentioned
7 that you faced racial gerrymandering
8 issues. Can you explain what you
9 meant by that?

10 A. Well, in every litigation
11 cycle there is an awareness of the
12 need to avoid racial gerrymandering.
13 There have been at times accusations
14 of racial gerrymandering and in that
15 context I have encountered racial
16 gerrymandering claims or the theory.

17 Q. With respect to any other
18 claim of racial discrimination have
19 you ever brought and/or defended
20 against racial discrimination?

21 A. Yeah. I brought a racial
22 -- a lawsuit before that was based
23 on racial discrimination.

24 Q. What was the nature of that
25 claim?

1 TERRENI

2 A. It was a lawsuit brought
3 under the South Carolina, I believe
4 it's called the State Accommodations
5 Act against a restaurant that
6 discriminated against my clients for
7 refusing them service.

8 Q. What about a Voting Rights
9 Act claim, have you ever brought or
10 defended against one of those?

11 A. Yes, ma'am.

12 Q. In what context?

13 A. Well, there have been a
14 few. Would you like me to try to go
15 through them or...

16 Q. Yes, please, briefly. What
17 body was at issue?

18 A. They were primarily Section
19 5 claims. I litigated a Section 5
20 claim on behalf of the Richland
21 County Republican Party in the '90s
22 involving the need to preclear
23 changes in a redistricting plan. I
24 was the plaintiff.

25 I defended the State

1 TERRENI

2 Republican Party in an action that
3 was brought trying to compel
4 preclearance of the state
5 presidential primary in 2000, which
6 was a volunteer primary.

7 I brought a Section 5 claim I
8 believe against Allendale County
9 several years ago involving
10 Allendale, one of the Allendale
11 County local governments and that
12 was also a preclearance issue and an
13 equal protection issue.

14 That's what I remember off the
15 top of my head.

16 Q. You mentioned Section 5.
17 What is your understanding of what
18 Section 5 required?

19 A. Retrogression.

20 Q. What does retrogression
21 mean to you?

22 A. Well, what retrogression
23 meant to me was -- well, it was
24 twofold. It was one that the
25 existing rights of minority voters

1 TERRENI

2 should not be diminished in a
3 redistricting plan absent
4 unavoidable circumstances such as
5 inward migration or something of
6 that sort.

7 There was an intent component
8 in Section 5 as I recall. And then
9 as a practical matter it required
10 either getting preclearance from the
11 Justice Department and persuading
12 them that a plan was
13 nonretrogressive or retrogressive
14 depending on what side I was on.
15 And also -- or in the alternative
16 obtaining a declaratory judgment
17 from the D.C. Circuit.

18 Q. Under Section 5 could a
19 jurisdiction go from having three
20 majority-minority districts to two,
21 for example?

22 A. It could.

23 Q. It could under what
24 circumstances?

25 A. A plethora of

1 TERRENI

2 circumstances, but one would be that
3 the population wouldn't be there to
4 support three minority districts
5 anymore.

6 Q. Did it require looking at
7 voting patterns to see whether or
8 not there was racial bloc voting in
9 a jurisdiction?

10 A. It could.

11 Q. Are you familiar with
12 racial bloc voting?

13 A. To some extent, yes.

14 Q. What do you understand it
15 to mean?

16 A. I mean racial bloc voting
17 if you are referring to the Gingles
18 preconditions it would entail a
19 situation in which the minority
20 community is sufficiently compact to
21 form the majority district, that the
22 minority community is politically
23 cohesive and tends to attempt to
24 vote candidates of its choice. Then
25 if you have racially polarized

1 TERRENI

2 voting, you would have the majority
3 community consistently frustrating
4 the efforts of the minority
5 committee to elect candidates of its
6 choice.

7 Q. While you were defending or
8 while you were working on Section 5
9 actions was it also possible for --
10 are you aware whether it was
11 possible for a jurisdiction to
12 receive preclearance under Section 5
13 and still face a lawsuit on the
14 other side of that preclearance
15 under some other constitutional or
16 statutory framework?

17 A. I'm aware that it was.

18 Q. Are you aware that the
19 constitutional and statutory
20 framework still exists today that
21 existed when Section 5 was in
22 operation?

23 A. I'm aware that -- yes.
24 Generally speaking. I mean I
25 haven't wanted to do a history

1 TERRENI

2 lesson here because I'm not capable
3 of it, but I'm generally aware that
4 you can still sue someone over a
5 redistricting plan under Section 2
6 or the 14th Amendment or whatever
7 causes of action existed before
8 Section 5 no longer was in effect.

9 Q. No longer is in?

10 A. Effect.

11 Q. Section 5 is still
12 constitutional, it just doesn't
13 function anymore, is that your
14 understanding?

15 A. My understanding is until
16 such time as Congress were to update
17 the coverage formula Section 5
18 cannot be implemented.

19 Q. Do you know anything about
20 the bail-in requirement under
21 Section 3C under the Voting Rights
22 Act? Are you familiar with that?

23 A. I'm generally aware that
24 plaintiffs can sue a jurisdiction
25 for discriminatory practices. You

1 TERRENI

2 know, I don't know the particulars
3 of it, but to force coverage of
4 Section 5 for a particular
5 jurisdiction.

6 Q. Have you ever brought or
7 defended against a Section 2 action
8 under the Voting Rights Act?

9 A. Bear with me, I haven't
10 practiced law in a while.

11 I have never brought a Section
12 2 action. It is possible that
13 Section 2 was raised as a cause of
14 action in some of the litigation in
15 which I have been involved.

16 Q. Have you ever represented a
17 minority individual plaintiff or a
18 group that served minority voters in
19 a Section 5 or other voting type
20 challenge or case?

21 A. That's a broad statement.
22 I mean if you are talking about a
23 named plaintiff, to the best of my
24 recollection, no. There would have
25 been -- there may have been minority

1 TERRENI

2 members involved in the entities
3 that I represented.

4 Q. Have you ever represented
5 -- you mentioned having represented
6 Republican organizations in some
7 Section 5 proceedings. Have you
8 ever represented a
9 Democratic-affiliated organization
10 in a Section 5 proceeding?

11 A. No.

12 Q. Would you consider the
13 Voting Rights Act a race-conscious
14 statute?

15 A. I don't understand the
16 question.

17 Q. Would you consider the
18 Voting Rights Act to be a statute
19 that requires awareness of race?

20 A. Not universally. I mean it
21 is certainly a statute that is
22 designed to protect the rights of
23 racial minorities under certain
24 circumstances but it doesn't mean
25 that you need universal awareness of

1 TERRENI

2 race. Again, I'm not sure I'm
3 understanding your question. I'm
4 not trying to be evasive though. It
5 just seems to me that what you would
6 do anyway.

7 Q. In order to determine
8 Section 5 compliance or Section 2
9 compliance would you agree that you
10 have to be aware of the race of
11 voters in a jurisdiction?

12 A. I think those are two
13 different questions. Section 5
14 compliance I would imagine you do
15 need to be aware of the race of the
16 voters in a jurisdiction. Section 2
17 compliance involves defending a
18 Section 2 claim and may not -- at
19 the point their claim is brought
20 they need to have that awareness.
21 But you wouldn't automatically or
22 universally need to be aware of the
23 race of the voters.

24 Q. You mentioned Thornburg
25 versus Gingles and you mentioned

1 TERRENI

2 something about determining whether
3 a minority community is compact,
4 whether the majority of -- minority
5 community is politically cohesive,
6 whether or not another group
7 consistently votes against that
8 community. Does that require an
9 awareness of the race of particular
10 voters in order to determine those
11 different elements that you set
12 forth?

13 A. To determine those elements
14 it would, yes.

15 Q. You mentioned Section 2
16 compliance involves defending
17 against a Section 2 lawsuit. Is it
18 possible to affirmatively raise a
19 Section 2 claim?

20 A. I don't understand how you
21 would do that.

22 Q. Have minority plaintiffs
23 affirmatively brought Section 2
24 lawsuits, are you aware of that?

25 A. That's different from what

1 TERRENI

2 I think you were asking me.

3 Minority plaintiffs have certainly
4 brought Section 2 lawsuits.

5 Q. And do you believe that
6 requires an awareness of race in
7 order to bring a Section 2 lawsuit?

8 A. I would imagine so.

9 Q. And do you agree that it
10 would require an awareness of race
11 to defend against a Section 2
12 lawsuit?

13 A. Yes.

14 Q. So Section 5 requires an
15 awareness of race, Section 2
16 requires an awareness of race. What
17 about an intentional racial
18 discrimination claim, does that
19 require an awareness of race?

20 A. Well, let's back up. I
21 didn't say Section 2 required an
22 awareness of race universally. I
23 said Section 2 you need an awareness
24 of race to defend a Section 2 claim.
25 Does it foreclose an awareness of

1 TERRENI

2 race in redistricting otherwise?
3 But it also doesn't mandate it. I
4 might be in South Dakota and I might
5 not need a section -- I'm not
6 familiar with the demographics of
7 South Dakota but I imagine Section 2
8 is not an overriding concern there.

9 So you are asking universal
10 questions about Section 2 and
11 Section 5 that I'm really kind of
12 unable to say. But if you are
13 asking me would I need awareness of
14 race to defend a Section 2 claim,
15 yeah, sure.

16 Q. Are there protected groups
17 who live in South Dakota are you
18 aware?

19 A. No. I told you I'm not
20 aware of the demographics. I
21 mention that as a hypothetical, but
22 I'm certainly, you know -- you tell
23 me. I mean you have national
24 experience, I don't know. But if
25 you were an universally majoritarian

1 TERRENI

2 jurisdiction without a minority
3 group that required protection, I'm
4 not sure you would need great
5 awareness of race. That's all I was
6 trying to say.

7 Q. Do you understand Section 2
8 to apply nationwide?

9 A. Yes.

10 Q. Or does it apply to certain
11 jurisdictions?

12 A. I understand it to apply
13 nationwide.

14 Q. Do you understand that
15 Native American people, for example,
16 live in South Dakota?

17 A. Of course. Yes.

18 Q. And so if they live in
19 South Dakota and are a minority in
20 the community and allege racial vote
21 dilution could they bring a Section
22 2 lawsuit?

23 A. Yeah.

24 Q. In order to bring or defend
25 against an intentional racial

1 TERRENI

2 discrimination claim do you think
3 that that requires an awareness of
4 race?

5 A. I don't know. It's a very
6 broad question. I just don't know.
7 I never defended intentional
8 discrimination.

9 Q. Have you read the
10 complaints that have been filed by
11 plaintiffs in this lawsuit?

12 A. I read the third amended
13 complaint preparing for this
14 deposition. I believe I read the
15 first complaint. I didn't spend a
16 great deal of time but I did read
17 it.

18 Q. Would you agree that the
19 third amended complaint focuses on
20 plaintiffs' challenge to the
21 congressional districts that we
22 discussed, 1, 2 and 5?

23 A. That's my recollection.

24 Q. And so today we are going
25 to focus on the allegations in the

1 TERRENI

2 third amended complaint not the
3 first complaint or any of the
4 subsequent complaints that have been
5 filed but solely the third amended
6 complaint just so that we are on the
7 same page.

8 Do you understand?

9 A. That's up to you.

10 Q. Okay. In addition to the
11 attorneys at Jones Day and Robison
12 [sic] Gray, whose name I also may be
13 missing if they changed the name,
14 and without going into the content
15 of those discussions, have you
16 sought legal advice from any other
17 attorneys about this lawsuit?

18 A. No.

19 Q. What about Nexsen Pruet?

20 A. No.

21 Q. Now you acknowledge that
22 you have been involved in South
23 Carolina's redrawing of its
24 congressional lines this cycle prior
25 to the third amended complaint being

1 TERRENI

2 filed. Is that accurate?

3 A. It would be accurate to say
4 that I worked for the South Carolina
5 State Senate, one that drew the
6 congressional lines that are being
7 disputed.

8 Q. And with respect to working
9 with the Senate to redraw
10 congressional lines this cycle have
11 you sought legal advice from
12 attorneys at Jones Day?

13 A. The Senate has sought legal
14 advice through me, yes.

15 Q. Which attorneys?

16 A. John Gore primarily,
17 Michael Carvin and Lou Fisher. And
18 another associate or partner of
19 Mr. Gore who will be offended that I
20 can't remember his name.

21 Q. Can you pronounce Mr. Lou's
22 last name, please?

23 A. Fisher.

24 Q. Fisher?

25 A. F-I-S-H-E-R.

1 TERRENI

2 Q. So John Gore, Michael
3 Carvin, Lou Fisher and another
4 associate, those are the four
5 attorneys at Jones Day that you have
6 interacted with regarding
7 congressional redistricting on
8 behalf of the Senate?

9 A. Well, I believe he was a
10 partner and his name I believe was
11 Stewart Copeland [sic]. I'm sorry,
12 that's also a name of a band member
13 of The Police but I'm not sure so I
14 don't want to get them confused but
15 I believe that was his name.

16 Q. SO Stewart Copeland [sic],
17 Lou Fisher, Michael Carvin and John
18 Gore?

19 A. Yes, ma'am.

20 Q. When did you begin
21 corresponding with them regarding
22 congressional lines for the Senate?

23 A. I want to answer your
24 question accurately. I began
25 corresponding with them regarding

1 TERRENI

2 redistricting, it would have been in
3 2011 or late 2010. Generally
4 speaking, that correspondence would
5 have included congressional and
6 Senate redistricting processes.

7 Regarding lines, I'm not sure
8 I remember when I -- the first time
9 I discussed lines with -- is that
10 what you asked? I'm sorry.
11 Congressional lines or congressional
12 redistricting?

13 Q. Let's make sure we are on
14 the same page. The redrawing of the
15 congressional map this cycle, I'm
16 interested in when you started
17 speaking with, corresponding with,
18 communicating with the four people
19 at Jones Day who you mentioned this
20 cycle?

21 A. To the extent that
22 congressional redistricting was
23 implicated in the overall
24 redistricting process it would have
25 been sometime around early 2011 or

1 TERRENI

2 2010, late 2010. If you are asking
3 something more specific, please let
4 me know.

5 Q. So for this, the census
6 release data in 2020 is the 2021, is
7 that fair to say?

8 A. I don't know.

9 Q. I'm sorry?

10 A. I'm sorry, was that a
11 question?

12 Q. Do you agree with that, the
13 census release data for this
14 redistricting cycle in 2021, would
15 you agree with that?

16 A. Would about it?

17 MR. GORE: Object to form.

18 Q. Would you agree that the
19 U.S. census released data related to
20 the redrawing lines for this cycle
21 in 2021?

22 A. Oh, yes.

23 Q. And is it your position
24 that you were communicating with the
25 four people who you identified at

1 TERRENI

2 Jones Day about the redrawing of the
3 lines that follows the release of
4 that data beginning after -- in the
5 last decade in 2011, 2010?

6 MR. GORE: Object to form.

7 A. I'm really -- I don't
8 understand the question.

9 Q. Okay. Let me try again.
10 You mentioned speaking to four
11 partners at Jones Day. Was that
12 with regard to the redrawing of
13 congressional lines by the Senate
14 for the post 2020 redistricting
15 cycle?

16 A. It was regarding the post
17 2020 redistricting cycle generally,
18 which would include redrawing
19 congressional lines. That process
20 started in late 2010. And if you
21 are asking at what point -- if you
22 are asking me something else,
23 please, ask it.

24 Q. I'm confused about why --
25 so your relationship with Jones Day

1 TERRENI

2 about this redistricting cycle goes
3 back to 2010, am I hearing you
4 right, or did you mean 2020?

5 A. I'm sorry. I meant 20 -- I
6 did mean 2020 although I had a
7 relation or the Senate was also
8 represented by Jones Day in the last
9 cycle. But I meant 2020.

10 Q. So late 2020 you started
11 talking to Jones Day about the
12 redrawing of lines for South
13 Carolina which may include
14 congressional lines?

15 A. Correct, yeah.

16 Q. Okay. What about Robison
17 Gray, who had you spoken with,
18 communicated with there in
19 particular about the redrawing of
20 congressional lines for the Senate
21 or by the Senate?

22 A. Rob Tyson and Lisle
23 Traywick but that was after your
24 litigation was filed.

25 Q. And did you talk to anyone

1 TERRENI

2 with Nexsen Pruet or from Nexsen
3 Pruet about, not this lawsuit, but
4 the redrawing of congressional lines
5 following the 2020 census?

6 A. No, ma'am.

7 Q. What about the Senate
8 President's Office, did you
9 communicate with them about the
10 redrawing of congressional lines by
11 the Senate for this cycle?

12 A. During the drawing process
13 or after?

14 Q. During the drawing process?

15 A. I don't recall.

16 Q. What about the Office of
17 Legislative Counsel?

18 A. Only to the extent that we
19 were discussing like bill formats
20 and things like that.

21 Q. What about Senate Judiciary
22 counsel?

23 A. Certainly, yes.

24 Q. Does that include Paula
25 Benson?

1 TERRENI

2 A. Yes.

3 Q. How frequently would you
4 communicate with her about the
5 redrawing of congressional lines for
6 the Senate?

7 A. It depends on what part of
8 the cycle we are in, but when --
9 generally speaking, around the time
10 the staff plan was released and
11 shortly before that I would have
12 communicated with Paula on almost a
13 daily basis.

14 Q. And when did that begin?
15 So your communication with her was
16 isolated to around the time of the
17 staff plan or shortly before then,
18 it did not begin in 2020 like with
19 Jones Day?

20 A. No, ma'am, that's not what
21 I'm saying. What I'm saying is that
22 your question, as I understood it,
23 was about congressional lines.

24 Q. Yes.

25 A. And I'm saying I didn't

1 TERRENI

2 spend a great deal communicating
3 with Paula Benson about
4 congressional lines until the Senate
5 plan was substantially concluded and
6 we shifted our work to congressional
7 lines. So did I talk to Paula
8 Benson about Congress before then,
9 yeah, I'm sure I did. But the
10 frequency, which I believe you asked
11 me about, would have been very
12 different once we started getting
13 all of those into Congress.

14 Q. What is the time frame for
15 when you are talking about where the
16 Senate started get into Congress,
17 what time frame are we talking
18 about?

19 A. Generally speaking, I
20 believe it was around November of
21 2021.

22 Q. What was the -- let me --
23 what was the primary means of
24 communicating with those four
25 attorneys at Jones Day beginning in

1 TERRENI

2 2020, late 2020. And by means,
3 phone, email, in-person meetings,
4 how did you communicate with those
5 attorneys?

6 A. Telephone or video calls.
7 Probably some emails too but not --
8 primarily it would have been phone
9 or video.

10 Q. What about with Robison
11 Gray, also, how did you communicate
12 with them?

13 A. Well, I mean again that was
14 after the lawsuit was filed.
15 Primarily, again, phone and video.
16 May have been some email traffic I'm
17 sure.

18 Q. And with Ms. Benson
19 focusing on the time when the Senate
20 started focusing on congressional
21 lines around November 2021, what
22 were the means by which you
23 communicated with her?

24 A. Verbally and by email and
25 some video calls.

1 TERRENI

2 Q. Among Senate Judiciary
3 counsel what about John -- Breeden
4 John, are you familiar with him?

5 A. I am familiar with Breeden
6 John.

7 Q. Did you communicate with
8 him about congressional lines for
9 this -- drawn by the Senate?

10 A. Yes.

11 Q. How frequently?

12 A. Same frequency. As we got
13 into it, it would have been nearly
14 daily.

15 Q. And how did you communicate
16 with him?

17 A. Verbally, video, email.

18 Q. What about Ms. Baker, Maura
19 Baker, are you familiar with her?

20 A. Yes, ma'am.

21 Q. Did you communicate with
22 her about -- on the Senate side the
23 redrawing of congressional lines?

24 A. Yes.

25 Q. How frequently?

1 TERRENI

2 A. The same. Once we began
3 the process in earnest I
4 communicated with her almost daily.

5 Q. Madison Faulk, are you
6 familiar with her?

7 A. Yes, ma'am.

8 Q. And does she fall into that
9 same bucket as Ms. Benson, Breeden
10 John and Maura Baker?

11 A. No, ma'am. She wasn't
12 involved as frequently.

13 Q. Wasn't involved excuse me?

14 A. As frequently.

15 Q. Maxine Henry?

16 A. Same thing. Maxine was not
17 an attorney, Maxine was really -- is
18 Senate, was a Senate [inaudible] so
19 not as frequently.

20 Q. And Michelle McGee?

21 A. Yes, but maybe for
22 different reasons.

23 Q. Can you explain that?

24 A. Michelle was an
25 administrative assistant for the

1 TERRENI

2 Senate, was coordinating things like
3 logistics and that. She wasn't
4 really involved in drawing the map.

5 Q. Were there any other Senate
6 Judiciary counsel that you
7 interacted with when the Senate
8 focused on congressional lines that
9 we did not just discuss?

10 A. With Andy Fiffick.

11 Q. Okay.

12 A. I'm thinking to see if we
13 missed anybody. I don't believe
14 there's anybody else.

15 Q. And what was the frequency
16 that you communicated with Andy
17 Fiffick?

18 A. Daily.

19 Q. What were the means by
20 which you communicated with him?

21 A. Email, video calls, in
22 person. Oh, I should add there were
23 probably some text messages as well.

24 Q. Is that text with Andy
25 Fiffick, Ms. Benson, Breeden John

1 TERRENI

2 and Maura Baker?

3 A. Yes, ma'am. They all were.
4 It would have been mostly just
5 logistical, where are the meetings,
6 something like that.

7 Q. How many telephone or video
8 calls do you think you've had with
9 attorneys at Jones Day since late
10 2020?

11 A. I don't know.

12 Q. A couple of dozen?

13 A. I don't know.

14 Q. I'm sorry, I didn't hear
15 you. What did you say?

16 A. I said I don't know.

17 Q. How were those set up? Did
18 you set them up? Did you have an
19 assistant set them up or how did
20 they -- how were they scheduled?

21 A. Generally speaking, it
22 would be Jones Day scheduling. I
23 mean if you are talking about the
24 logistics of setting it up?

25 Q. Yes.

1 TERRENI

2 A. Somebody at Jones Day would
3 send a meeting invite and we would
4 have a call.

5 Q. Did you ever schedule any
6 of those phone or video calls, your
7 office?

8 A. It's possible, yeah.

9 Q. Who would have set those
10 up, you or someone who works for
11 you?

12 A. I would.

13 Q. Do you keep a calendar?

14 A. I do.

15 Q. Would your calendar
16 populate with the Zoom or telephone
17 conferences that you schedule with
18 Jones Day?

19 A. I assume so.

20 Q. Do you know whether or not
21 that calendar was collected for
22 discovery purposes in this case?

23 A. I don't recall.

24 Q. Would Senate Judiciary
25 counsel, any of the people that we

1 TERRENI

2 discussed, would they attend those
3 telephone or video calls with Jones
4 Day?

5 A. Sometimes.

6 Q. Would anyone who was not an
7 attorney but who was a nonattorney
8 be on those calls with Jones Day?

9 A. I don't recall that ever
10 happening.

11 Q. Did you seek legal advice
12 -- let me step back.

13 How would you -- what was the
14 purpose of your communications with
15 the Jones Day law firm, as you
16 understood it?

17 A. To seek legal advice.

18 Q. What does that mean?

19 A. To request legal advice.
20 I'm not sure how else to elaborate
21 on that.

22 Q. Generally what type of
23 legal advice would one need around
24 congressional redrawing of the lines
25 in South Carolina?

1 TERRENI

2 A. About the redistricting
3 process and the laws that need to be
4 compiled. I mean it's legal advice.
5 It's just that.

6 Q. Would it be reading -- them
7 advising you on the current state of
8 the law regarding redistricting?

9 A. Yeah.

10 Q. Would it involve them
11 advising you on the public -- any
12 public hearings that the South
13 Carolina Senate set up?

14 A. It could. I mean I don't
15 know if Mr. Gore wants to object to
16 any of this because it seems
17 privileged to me, but it could.

18 Q. Very generically could
19 legal advice involve reviewing
20 materials that the Senate published
21 on its Senate redistricting website?

22 A. It could.

23 Q. Would and could it involve
24 reviewing maps and associated data
25 that the Senate considered in

1 TERRENI

2 redrawing congressional lines?

3 A. Yes.

4 Q. Would and could it involve
5 discussing questions that
6 legislative members -- legislative
7 members had about the congressional
8 redrawing of lines?

9 A. It could.

10 Q. Could it involve questions
11 that were asked by the public about
12 the congressional redistricting
13 lines?

14 A. It could.

15 Q. Did you on occasion ask for
16 documentation of legal research
17 prepared by the Jones Day law firm?

18 A. I don't remember.

19 Q. Do you remember exchanging
20 documents with the Jones Day law
21 firm?

22 A. I'm sure I exchanged
23 documents with the Jones Day law
24 firm.

25 Q. Via email?

1 TERRENI

2 A. It would have been via
3 email if I did.

4 Q. Did you ever exchange
5 documents in person?

6 A. No.

7 Q. With respect to redrawing
8 Senate congressional lines this
9 cycle you are aware that there was a
10 Senate redistricting subcommittee
11 formed to consider congressional
12 lines?

13 A. There was a Senate
14 redistricting subcommittee formed to
15 consider Senate and congressional
16 ones.

17 Q. Who were the members of the
18 Senate subcommittee considering
19 congressional lines?

20 A. Luke Rankin, Brad Hutto,
21 Talley, Margie Bright Matthews. I'm
22 sure somebody -- oh, Senator
23 Campsen, Chip Campsen.

24 Q. What about Senators Young
25 and Sabb?

1 TERRENI

2 A. I didn't mean to slight
3 them. Of course Senator Young and
4 Senator Sabb.

5 Q. Which of those members are
6 lawyers you are aware?

7 A. Young, Sabb, Matthews -- I
8 mean, excuse me -- Matthews is not
9 on the committee. Young, Sabb,
10 Campsen, Rankin, Matthews. That's a
11 lot of them, right.

12 Q. What about Senator
13 Harpootlian, was he also a member?

14 A. He was a member. How could
15 I forget.

16 Q. Did you interact with any
17 of the staff of those subcommittee
18 members?

19 A. On occasion.

20 Q. Such as?

21 A. Senator Campsen's lawyer.
22 Senator Harpootlian's attorney from
23 his law practice. I think that's
24 it.

25 Q. And do you recall the name

1 TERRENI

2 of Senator Campsen's lawyer?

3 A. Brian Cole.

4 Q. Cole?

5 A. Cole, yeah.

6 Q. Do you recall the lawyer
7 for Senator Harpootlian?

8 A. Chris Kenney.

9 Q. What about Joey Opperman or
10 Opperman, do you know who that is?

11 A. I know who he is. I don't
12 think I ever directly interacted
13 with Mr. Opperman.

14 Q. Did you communicate with
15 House Judiciary counsel during
16 consideration by the Senate on
17 congressional lines?

18 A. I don't recall doing so.

19 Q. Emma Dean?

20 A. No.

21 Q. Patrick Dennis?

22 A. Dennis, you know, it's
23 possible that I had some
24 communication with Patrick. I don't
25 remember if it was during the Senate

1 TERRENI

2 process or the congressional process
3 or litigation process honestly. It
4 was minimal.

5 Q. Would that have been by
6 email, in person, by phone or a
7 combination thereof?

8 A. It could have been by text
9 but I believe that was about -- that
10 was about the litigation, I'm sorry.
11 Nothing other than that really. It
12 was -- I don't think I had any email
13 correspondence from Patrick. No,
14 actually come to think of it
15 regarding congressional, I don't
16 want to be absolute about it, but I
17 don't recall any conversation with
18 Patrick about congressional.

19 Q. And you mentioned text
20 messages with him about this
21 litigation?

22 A. It involved -- yes. Yes.
23 I had one text exchange with him.
24 It wasn't about the lawsuit as such,
25 it was about some lawyers.

1 TERRENI

2 Q. What about Roland Franklin,
3 are you familiar with him?

4 A. No.

5 Q. Jimmy Hinson?

6 A. Name rings a bell but I
7 didn't have any communication with
8 him.

9 Q. Are any of the Senate or
10 staff counsel that we talked about,
11 any of them black people?

12 A. Maxine Henry. I think
13 that's it.

14 Q. Is there any other legal
15 counsel that we haven't discussed
16 who you communicated with about this
17 cycle's redrawing of the
18 congressional lines?

19 A. In an attorney-client
20 context or?

21 Q. Yes.

22 A. No.

23 Q. And in a nonattorney-client
24 context, any other attorneys, any
25 other legal counsel?

1 TERRENI

2 A. Well, yeah. I mean there
3 were some lawyers I'm sure that
4 communicated with the community and
5 with me. Dale Oldham was one of
6 them. I'm trying to think if there
7 was anybody else. That was it I
8 believe.

9 Q. Who does Dale Oldham work
10 for?

11 A. That's a good question. I
12 don't know.

13 Q. Did you communicate with
14 him?

15 A. Yeah.

16 Q. How often?

17 A. Rarely. He called me after
18 his staff plan was released one or
19 two times and I'm talking about
20 communicating with him about
21 congressional redistricting.

22 Q. Did you talk to him about
23 noncongressional redistricting?

24 A. Yeah.

25 Q. Such as?

1 TERRENI

2 A. A boat. I didn't talk to
3 him very often but I have known Dale
4 for a long time. I'm sure he wished
5 me a Merry Christmas and that kind
6 of thing.

7 Q. How long have you known
8 him?

9 A. 30 years.

10 Q. And you don't know -- I'm
11 sorry, do you know who he works for?

12 A. I do not. I know he works
13 for some national Republican
14 organization. The National
15 Republican Redistricting Trust has
16 been mentioned in the discovery that
17 I have seen. I don't know if he
18 works with them or not. I have no
19 idea.

20 Q. So you talked to him one or
21 two times after the staff plan
22 released and we earlier discussed
23 that that was around November of
24 2021. Is that when you recall
25 talking to him?

1 TERRENI

2 A. I think so, yes.

3 Q. And only those one or two
4 times?

5 A. Again, if we are talking
6 about congressional, yes. Only
7 those one or two. It was a couple
8 of calls.

9 Q. Who else was on those
10 calls?

11 A. No one.

12 Q. How long did they last?

13 A. Couple minutes.

14 Q. Did you correspond by
15 email, text or some other means
16 after or around those conversations?

17 A. He sent me a couple of text
18 messages.

19 Q. Did you turn those over in
20 discovery in this case?

21 A. Yes.

22 Q. Do you know -- more than
23 five texts messages, around how
24 many?

25 A. I think it was just two or

1 TERRENI

2 three.

3 Q. What was the nature of
4 those texts?

5 A. As I recall, he texted us
6 something to the effect of having a
7 plan that he thought, just having a
8 plan that he wanted us to see.
9 There was a second text, if I
10 recall, just from the exhibits you
11 shared that -- says something about
12 he had some political data that was
13 different from the data we had
14 posted our website. Those were the
15 texts.

16 Q. Is your position that he
17 reached out to you initially or did
18 you reach out to him regarding
19 congressional maps?

20 A. He reached out to me.

21 Q. And is it your position
22 that he does not work for the South
23 Carolina Senate this congressional
24 cycle?

25 A. My position? I'm not aware

1 TERRENI

2 that he works for the -- whoa, whoa,
3 whoa. I'm not aware that he worked
4 for the -- that's right, I'm not
5 aware that he worked for the South
6 Carolina Senate during this
7 congressional cycle.

8 If you want me to expand, I am
9 aware that he did some work on a
10 Senate Republican caucus during the
11 Senate phase of redistricting, just
12 to be clear.

13 Q. Now, you said he wanted us
14 to see our maps, some maps on that.
15 Who was us that you are referring
16 to?

17 A. Senate -- Senate Judiciary
18 staff.

19 Q. And did he ultimately send
20 you that information?

21 A. Yes.

22 Q. And he sent that to you by
23 email?

24 A. Not me by email. He would
25 have -- he did not send anything but

1 TERRENI

2 he -- Adam Kincaid, who I understand
3 to be with the National Republican
4 Redistricting Trust, I believe, had
5 to send us the file. And he needed
6 to transfer it by gmail or by Google
7 Drive because it was a big file.
8 And he did it by sending it to Andy
9 Fiffick at a gmail address.

10 Q. Did you tell Oldham to send
11 it to Mr. Fiffick?

12 A. I didn't tell Oldham to
13 send it to Mr. Fiffick. I think at
14 some point during this conversation
15 I believe he would have been in the
16 room, we were looking for a gmail
17 address that this individual could
18 use and Andy probably volunteered
19 his gmail address so that the file
20 could be transferred.

21 Q. So Oldham calls you and
22 said he has some maps that he wants
23 the Senate Judiciary to look at.
24 Does he identify at that time that
25 those maps would come from the

1 TERRENI

2 National Republican Redistricting
3 Trust?

4 A. No. I don't think so. I
5 mean I understood them to come from
6 some Republican entity but I wasn't
7 familiar with the National
8 Redistricting Trust per se.

9 Q. Did you tell him at that
10 time to send them to the Senate
11 redistricting email that had been
12 publicized to the rest of the
13 public?

14 A. I told him he could but he
15 wanted us to see them. We had
16 already published the staff plan and
17 he said, well, I'd like to send,
18 something to the effect, I don't
19 remember the exact conversation,
20 that he wanted us to see them and
21 wanted us to see them quickly so we
22 gave him that email address.

23 Q. I want to look at what was
24 submitted as tab 50 which is a text
25 exchange between Mr. Oldham and

1 TERRENI

2 another person from November 23,
3 2021, that said South Carolina
4 Senate 4343. And that would be
5 Plaintiffs' Exhibit 1.

6 (Plaintiffs' Exhibit 1, Text
7 exchange, marked for
8 identification, as of this date.)

9 A. I'm sorry, tab 50?

10 Q. Yes.

11 A. Okay. All right.

12 Q. You have that in front of
13 you?

14 A. I do.

15 Q. Is this -- do you recognize
16 this text exchange?

17 A. Yes.

18 Q. Is this one of the texts
19 that you received from Mr. Oldham?

20 A. Yes.

21 Q. So this 803-530-2893 number
22 is yours?

23 A. It is.

24 Q. Is this your personal cell
25 phone, a work cell phone, what is

1 TERRENI

2 this?

3 A. It's both, my cell phone.

4 Q. And you used this cell
5 phone for Senate redistricting
6 purposes, this cycle?

7 A. Among other things, yes.

8 Q. Do you also receive emails
9 around your other business with your
10 law firm on this same cell phone?

11 A. Yes.

12 Q. So this is not a cell phone
13 designated just for the Senate, your
14 work with the Senate this
15 redistricting cycle?

16 A. No, ma'am.

17 Q. And this is one text
18 exchange, some of it is redacted.
19 Is this the sum total of texts that
20 you had with Mr. Oldham?

21 A. About congressional
22 redistricting or in general?

23 Q. About congressional
24 redistricting.

25 A. Sorry, I'm just trying to

1 TERRENI

2 look at it all.

3 I think so.

4 Q. So looking at the November
5 19, 2021, 9:38 a.m. text, Dalton
6 Oldham reads -- sends a text to you
7 that says: "Call me. Want to know
8 if you/Andy has it."

9 A. Um-hmm.

10 Q. Do you know what he's
11 referring to here?

12 A. I believe he's referring to
13 that plan -- he sent three plans at
14 one point and then he sent another
15 plan later on. I believe this would
16 refer to the first two plans that he
17 sent.

18 Q. Okay. We are going to look
19 at those because those were sent on
20 November 18th, I believe?

21 A. That would make sense.
22 Around that time.

23 Q. I'm sorry to interrupt you.

24 A. No, I just said that makes
25 sense, around that time. I don't

1 TERRENI

2 have a timeline in front of me but
3 that makes sense.

4 Q. And so he's texting you to
5 ask whether Andy has received it?

6 A. Yes.

7 Q. Okay. And you write and
8 respond: "Got it."

9 Are you saying got it you got
10 the maps or got it about calling him
11 in reference to his -- what he sent?

12 A. In reference to what he
13 sent.

14 Q. Did you end up calling him?

15 A. I don't remember. I'm sure
16 I did. At some point I called him
17 even before or after this. But we
18 did have a telephone conversation.
19 If you are asking me if I called him
20 after that text at 9:41 a.m., I
21 don't remember.

22 Q. How long was the
23 conversation that you had with him
24 after you received the maps?

25 A. Minutes.

1 TERRENI

2 Q. Would you have put that
3 meeting on your scheduler?

4 A. No.

5 Q. Do you recall putting any
6 meetings you had with Mr. Oldham up
7 on your calendar?

8 A. No. They weren't meetings,
9 they were telephone calls. I don't
10 usually log an unscheduled telephone
11 call on my calendar.

12 Q. Mr. Oldham responds:
13 "Clark, disag'd his numbers
14 differently than us. Please call.
15 I will explain."

16 Who is Clark?

17 A. Clark Bensen of Polidata,
18 our vendor for election data. I'll
19 point out he didn't respond to got
20 it. That's a message that he sent
21 several days later.

22 Q. So you responded: "Got it
23 on the 19th."

24 Then he responds on the 23rd:

25 "Clark disaggregated his numbers

1 TERRENI

2 differently than us. Please call, I
3 will explain."

4 A. He texts on the 23rd. I
5 don't think he's responding to my
6 saying got it on the 19th.

7 Q. I understand. And Clark,
8 who is he working for at this time?

9 A. Us, the Senate, on a
10 contract.

11 Q. And is he working on
12 congressional redistricting?

13 A. He's working on
14 redistricting in general. He's just
15 a data member. The company is
16 Polidata. All he did was
17 disaggregate and reaggregate
18 election results for the Senate.
19 And we put them on our website.

20 Q. What type of, you mention
21 the disaggregated and reaggregated
22 election results. What was the
23 point of that data, what could it be
24 used for?

25 A. To evaluate as far as the

1 TERRENI

2 meeting in the district.

3 Q. So census data, race data,
4 election results from particular
5 elections? Can you explain a little
6 bit more what the data was?

7 A. Of course. South Carolina
8 election results from past
9 elections. The precinct lines were
10 different before and after the
11 census. So what Clark was hired to
12 do was take the election results and
13 break them out, generally speaking,
14 to the bloc level through a formula
15 of some sort and then reaggregate
16 them into the new VTDs under the --
17 with the new ones. And that's the
18 data that's on our website.

19 Q. Did you use that data
20 during this cycle?

21 A. Yes, some of it.

22 Q. Do you know if subcommittee
23 members were aware that Clark Bensen
24 was working for the Senate -- Clark
25 Bensen was working for the Senate?

1 TERRENI

2 A. I think so. Whether they
3 aware specifically that it was Clark
4 Bensen or not they were aware that a
5 data vendor was working for -- had
6 been contracted by the Senate. We
7 had a discussion about that in one
8 of the early subcommittee meetings.

9 Q. Did Mr. Bensen report to
10 you or did he report to someone else
11 during this consideration of the
12 congressional lines?

13 A. Me.

14 Q. Did he send invoices to
15 you?

16 A. I believe he would have
17 sent his invoice to the clerk's
18 office. He may have sent it to me,
19 I don't remember.

20 Q. And do you know what he
21 meant by Mr. Oldham saying "Clark
22 disaggregated his numbers
23 differently than us"?

24 A. Yes.

25 Q. Can you explain?

1 TERRENI

2 A. Yes. Mr. Oldham was very
3 concerned that Clark's numbers
4 overestimated the Republican
5 strength of various precincts and,
6 therefore, of the First District
7 under our plan because they had used
8 a different method of disaggregating
9 and reaggregating their data which
10 Mr. Odom thought was more accurate.

11 Q. Where did you land on this?
12 Did you think that Clark's method as
13 compared to -- when you are saying
14 their method, is this NRRT or is
15 this Oldham or who?

16 A. He didn't specify -- I
17 don't think he specified could have
18 been -- I don't know. It was
19 somebody associated with Mr. Oldham.
20 That's all I know.

21 Q. What position did you take
22 that Clark's data had done it
23 correctly or that the other entity
24 had done it correctly?

25 A. I didn't take a position

1 TERRENI

2 one way or the other. I never saw
3 Mr. Oldham's data or discussed it in
4 detail but I felt satisfied that
5 what Clark had given us was accurate
6 and that we really didn't need to
7 revisit the issue.

8 Q. But did you call him after
9 this to talk about this topic?

10 A. Yeah. I -- he said Clark
11 dis- -- please call and I will
12 explain. I called him, he
13 explained.

14 Q. And then it looks like he
15 called you at 6:00 on the 23rd,
16 6:00 p.m. on the 23rd and then he
17 texted you again at 9:01 on the
18 23rd, the same day, and said: "We
19 did another version. Call me back
20 please."

21 So that means -- did you call
22 him after 6:00 p.m. when he sent his
23 first text and then he sent you back
24 what he's referencing here, this
25 other version, is that how it

1 TERRENI

2 worked, or can you explain the
3 interaction between those two texts
4 that he sent you on the same day
5 about three hours apart?

6 MR. GORE: Object to form.

7 A. I'll do my best. He sent
8 me a text at 9:01 p.m. viewed by me
9 late at 9:15 p.m. I'm just relying
10 on the record here. He says: "We
11 did another version. Call me back."

12 I said: "Another version?"

13 He said: "Another version of
14 the map."

15 And at 9:15 p.m. I replied:
16 "Tomorrow," because it was 9:15 p.m.
17 And I would have called him back the
18 next day and, I imagine the next day
19 because I recall that he sent us
20 another version of the plan and that
21 plan was what he saw as -- what he
22 saw was an improvement on the staff
23 plan which we had released and
24 that's what it was.

25 Q. And then there's a redacted

1 TERRENI

2 not responsive text exchange after
3 November 23, 9:15 p.m. but before
4 November 30, 11:19, a.m., but on
5 11/30/2021 at 11:19 you view a
6 message from Dalton Oldham that
7 says: "Do you want our political
8 data. We are prepared to put it up
9 on a publicly available site so you
10 can download? It will provide an
11 explanation of the disaggregation,
12 reaggregation process and provides
13 accurate bloc level political data
14 without using race."

15 Do you see that?

16 A. Okay.

17 Q. Did you get that political
18 data from Mr. Oldham?

19 A. No.

20 Q. Did you see it?

21 A. No.

22 Q. And do you know what he
23 means about providing
24 disaggregation/reaggregation and
25 accurate bloc level political data

1 TERRENI

2 without using race, do you know what
3 that is?

4 A. No.

5 Q. Do you know if Mr. Oldham
6 is affiliated with someone who is
7 now deceased named Thomas Hofeller
8 or Hofeller, H-O-F-E-L-L-E-R, I
9 believe?

10 A. Hofeller. Yes, I know him.

11 Q. What do you know about
12 Mr. Hofeller?

13 A. Mr. Hofeller was a
14 demographer for various Republican
15 organizations, maybe the Republican
16 National Committee. He was -- I
17 believe he worked with the Census
18 Bureau at some time. That's what I
19 know about Mr. Hofeller. I met him
20 a couple of occasions with
21 redistricting NCSL functions.

22 Q. Would you consider him a
23 controversial figure?

24 A. No opinion about
25 Mr. Hofeller one way or the other.

1 TERRENI

2 Q. Were you ever on any phone
3 calls with Mr. Oldham, Mr. Gore and
4 yourself?

5 A. No.

6 Q. Are you aware of whether
7 Mr. Gore spoke to Mr. Oldham?

8 A. Not to my knowledge. I
9 don't know. I mean they both are in
10 the same office or actually but not
11 to my knowledge.

12 Q. Do you know if Mr. Oldham
13 spoke with anyone at Jones Day?

14 A. No.

15 THE WITNESS: Would this be a
16 good time to take a break?

17 MS. ADEN: Yes, maybe five
18 minutes, is that okay or do you
19 need more?

20 THE WITNESS: Five would be
21 fine. Thank you.

22 MS. ADEN: Let's come back at
23 11:18, please.

24 THE WITNESS: Sounds great.
25 Thank you.

1 TERRENI

2 (Whereupon, there is a recess
3 in the proceedings.)

4 MS. ADEN: Back on the record.

5 Q. You mentioned knowing
6 Mr. Oldham for about 30 years. How
7 would you contact him if you needed
8 to?

9 A. I would call him.

10 Q. Would you use the number on
11 this text message?

12 A. I assume I would, yeah.
13 Whatever is that number is what I
14 would use.

15 Q. So you're not aware that
16 this number on this text exchange
17 from at least the last time you
18 corresponded with him in
19 November 30, 2021, you are not aware
20 that it's changed?

21 A. No, ma'am.

22 Q. Okay.

23 A. Or that it hasn't changed.
24 I just don't know.

25 Q. Do you know if he has an

1 TERRENI

2 office in South Carolina, is he
3 based in Washington? Do you know
4 physically where Mr. Oldham is?

5 A. No, ma'am.

6 Q. Have you seen him in 2022
7 physically?

8 A. I don't think so, no. Not
9 that I recall. It's possible but I
10 don't recall.

11 MS. ADEN: If we could go to
12 tab 9, which is a communication
13 between Mr. Fiffick and Mr. Kincaid
14 dated November 18, 2021, South
15 Carolina Senate 3244 is the Bates
16 stamp. That would be Plaintiffs'
17 Exhibit 2 I believe.

18 (Plaintiffs' Exhibit 2,
19 Communication between Mr. Fiffick
20 and Mr. Kincaid, Bates South
21 Carolina Senate 3244, marked for
22 identification, as of this date.)

23 Q. Do you have that?

24 A. Yes, ma'am. Is it a --
25 it's an email dated November 18th?

1 TERRENI

2 Q. Yes.

3 A. Yes, I have it.

4 Q. From Adam Kincaid to Andrew
5 Fiffick.

6 A. Yes, ma'am.

7 Q. So you've seen this before?

8 A. Yes.

9 Q. Before even I sent it?

10 A. Before you sent it, yes.

11 Q. When did you see it?

12 A. I think in the process of
13 discovery.

14 Q. Is this the two maps that
15 you believe Mr. Oldham was referring
16 to in the text exchange that we just
17 went over?

18 A. I believe so, yes, ma'am.

19 Q. And it's your position,
20 correct me if I'm wrong, that in
21 speaking to Mr. Oldham you told him
22 that he could communicate to NRRT,
23 that they could share these maps
24 with Mr. Fiffick at his gmail?

25 MR. GORE: Object to form.

1 TERRENI

2 A. Mr. Oldham or Mr. Kincaid,
3 whoever, needed an email address
4 with which to share these maps. And
5 I believe, I don't specifically
6 recall, that we provided -- I
7 provided it to him probably. I just
8 know that Mr. Oldham called, he
9 wanted to share these maps with us,
10 we allowed him to do so.

11 Q. Did you know Mr. Kincaid
12 before he sent these emails?

13 A. No, ma'am.

14 Q. Have you talked to
15 Mr. Kincaid on the phone?

16 A. No.

17 Q. Have you emailed separately
18 with Mr. Kincaid about congressional
19 redistricting?

20 A. No.

21 Q. So Mr. Oldham is the go-to
22 to NRRT as far as you are concerned?

23 A. No. Mr. Oldham -- I don't
24 have a go-to to NRRT.

25 Q. But Mr. Oldham is the

1 TERRENI

2 connection between NRRT and the
3 Senate with regard to these maps?

4 A. Yeah.

5 MR. GORE: Objection.

6 Mischaracterizes his testimony.

7 You can answer.

8 A. Yeah.

9 Q. Can you read the subject of
10 this email, the one from
11 November 18, 2021, at 10:05 p.m.?

12 A. A and B.zip.

13 Q. Item shared with you A and
14 B.zip, is that accurate?

15 A. Yes, ma'am.

16 Q. And did you ultimately
17 review what was in the A and B.zip?

18 A. Yes.

19 Q. What was in there?

20 A. Two maps.

21 Q. Do you know if those maps
22 are referred to or have been
23 referred to as the Wren and Palmetto
24 maps?

25 A. I believe they have.

1 TERRENI

2 Q. And do you know -- how did
3 you come to see them, can you
4 describe what you understand
5 happened once this Adam Kincaid sent
6 Mr. Fiffick this zip file, how did
7 it go from there to you seeing them?

8 A. One way or another the
9 files were conveyed to Will Roberts
10 who loaded them in the Maptitude
11 software so that we could look at
12 them.

13 Q. And by saying we looked at
14 them, who was that?

15 A. Generally Mr. Roberts, me,
16 Mr. Fiffick, Breeden John may have
17 been there. I don't believe anybody
18 else specifically but...

19 Q. Do you know if these maps
20 were shared with Jones Day?

21 A. I don't recall. I think
22 so.

23 Q. Did you share them with
24 Jones Day?

25 A. I don't remember.

1 TERRENI

2 Q. How would you have shared
3 them with Jones Day? Via email?

4 A. I don't think I would have
5 shared them with Jones Day, it would
6 have been -- I would have had Mr.
7 Roberts or somebody send it to Jones
8 Day, if we did it. I just don't
9 remember this.

10 Q. Why would you have sent
11 them to Jones Day for what purpose?

12 A. Because they were submitted
13 to the Senate -- they were
14 represented as having some political
15 consensus behind them and so just
16 for general informational purposes.

17 Q. Political consensus of who?

18 A. The congressional
19 delegation. Specifically the
20 Republican congressional delegation.
21 Mr. Oldham told me they had worked
22 with the Republican congressional
23 delegations on some maps or map
24 delegation singular or rather he had
25 said they worked on the delegations

1 TERRENI

2 -- with the delegation on maps. I
3 asked him if the delegation included
4 Mr. Clyburn. He said no, this is
5 the Republican delegation and that
6 was it. That's what he told me.

7 Q. And by -- so that means
8 that -- did you understand that to
9 mean that Mr. Oldham had
10 communicated with all six members of
11 the congressional delegation but
12 Representative Clyburn on this map
13 or both of these maps?

14 A. I understood Mr. Oldham to
15 represent that the maps were
16 acceptable to the six members of the
17 delegation. We did not discuss
18 whether he individually communicated
19 with each member or whether he
20 communicated with the staff or he
21 didn't do a role call. Just what he
22 said.

23 Q. Are you aware of whether --
24 are you aware that there were other
25 maps submitted by the public

1 TERRENI

2 proposing congressional lines of
3 this cycle?

4 A. Yes.

5 Q. Are you aware whether those
6 maps were submitted to Jones Day?

7 A. I imagine Jones Day was
8 made aware of various maps that were
9 submitted. I don't want to go in --
10 I don't think it's appropriate,
11 unless my attorney tells me so, to
12 go through each map that I submitted
13 to Jones Day, but yes Jones Day was
14 generally made aware of maps that
15 were submitted to the Senate.

16 Q. How many maps did you share
17 with Jones Day?

18 A. I don't know how many maps
19 I individually shared with Jones Day
20 again -- I mean it could have been
21 anybody on Senate staff. I mean if
22 you are saying physically shared,
23 probably not many because Will
24 Roberts would have been the logical
25 person to do it. I'm speculating

1 TERRENI

2 here. I just don't -- I mean are
3 you asking me you if we,
4 collectively, the Senate staff
5 shared maps with Jones Day, yes.
6 The logistics of it, I'm sorry, I
7 don't remember.

8 Q. How did you determine which
9 maps you would have shared, you
10 collectively, the Senate, with Jones
11 Day?

12 A. Maps that I thought had
13 some particular political
14 significance perhaps at a
15 constituency that would have made
16 them likely to adopt or the member
17 had some concerns about or had
18 questions about or was interested
19 in. If someone -- I mean that's a
20 general answer but it's pretty much
21 accurate.

22 Q. How would a nonpartisan
23 organization have factored into your
24 calculus of a map that had political
25 significance?

1 TERRENI

2 A. They certainly could have.
3 League of Women Voters was very
4 active, well respected participant
5 in the process. I'm sure we paid
6 close attention to their maps.

7 Q. Do you recall specifically
8 sharing the League of Women Voters
9 map with Jones Day?

10 A. Again, I'm not trying to be
11 picky here but do I recall me
12 specifically sharing it, no. Did we
13 share it with Jones Day, probably
14 so. Jones Day also could have
15 accessed it from the website. I
16 mean they are all posted.

17 Q. How many publicly submitted
18 maps are you aware were proposed by
19 the public that were posted on the
20 Senate's website?

21 A. I believe all of them.

22 Q. Excuse me?

23 A. I believe all of them, at
24 least the ones that were submitted
25 by the submission deadline.

1 TERRENI

2 Q. But how many were there,
3 were there more than five, more than
4 ten, more than 20? Do you have any
5 sense of how many publicly submitted
6 maps there were?

7 A. It was more than five. May
8 have been more than ten. I don't
9 recall. We can look at the website
10 and see.

11 Q. But based upon your
12 previous testimony is it your
13 position that not you or the Senate
14 staff collectively would not
15 necessarily have shared each of
16 those maps with Jones Day, you would
17 have made some determination about
18 which ones you would have selected
19 to send to Jones Day, whether or not
20 they looked at them separate -- all
21 of them separately or not you made a
22 selection of some not all of the
23 maps to be submitted to Jones Day?

24 MR. GORE: Objection.

25 Mischaracterizes testimony. Go

1 TERRENI

2 ahead. You can answer.

3 A. Well, we did not share
4 every map with Jones Day. That
5 obviously involved some editorial
6 function which we exercised in
7 sending maps to Jones Day. We did
8 not send every map to Jones Day.

9 Q. The calculus for which maps
10 you would send to Jones Day was
11 essentially whether or not you
12 thought, you collectively thought
13 that a map had some political
14 significance, was likely to be
15 adopted or a member would be
16 interested in, those were the
17 contours of how you determine which
18 maps you would pick and potentially
19 submit to Jones Day?

20 A. Those would be some of the
21 reasons, yes, for sending maps to
22 Jones Day, yes.

23 Q. Looking at tab 58, and I
24 sent you 57, 58 is the associated
25 stats for the Wren map. I think we

1 TERRENI

2 added it to that share point file.
3 Do you see a number 58 in that file?

4 A. No, ma'am. I had to
5 download those exhibits so if you
6 added it afterward, you sent them to
7 us. For whatever reason I don't
8 have it.

9 MS. ADEN: John, could you
10 screen share it, 58.

11 MR. GORE: I'm not sure I have
12 it either. I'm checking to see if
13 I have it, but I'm not certain that
14 I do.

15 Q. It also should be -- have
16 uploaded in Veritext.

17 MR. GORE: If Andrew or John
18 Cusick has it and can share it,
19 that might be a little easier.

20 MS. ADEN: Yeah. It's South
21 Carolina 26635, that's the Bates
22 stamp number. John, you can let me
23 know if you have it.

24 MR. CUSICK: Yup. I'm about
25 to pull it up in one second. Oh,

1 TERRENI

2 unfortunately -- maybe we can go
3 off record for a moment just
4 because the host disabled
5 participant screen sharing.

6 MS. ADEN: Mr. Gore, do you
7 need a minute to talk with your
8 client about this?

9 MR. GORE: Yeah. Let's take a
10 minute.

11 (Whereupon, there is a recess
12 in the proceedings.)

13 (Plaintiffs' Exhibit 3, Wren
14 plan, Bates South Carolina Senate
15 26635, marked for identification,
16 as of this date.)

17 Q. So you have had a chance to
18 look at South Carolina Senate 26635,
19 tab 58. This is identified in the
20 top left-hand corner as the Wren
21 plan.

22 Have you seen this document
23 before?

24 A. I don't remember.

25 Q. Looking at this document

1 TERRENI

2 would this have been something
3 prepared by the South Carolina
4 Senate during the redistricting
5 process or does this look like a
6 document prepared by someone outside
7 of the Senate?

8 A. It likely was prepared by
9 the Senate. It was definitely
10 prepared by somebody with Maptitude.
11 We used Maptitude. And so I assume
12 it's a Senate document.

13 Q. Were population summaries
14 like these something you regularly
15 saw during consideration of
16 congressional plans?

17 A. Among others, yes.

18 Q. And this summary includes
19 information about total population;
20 is that correct?

21 A. Yes.

22 Q. And deviations from
23 equality amongst the seven
24 congressional districts in total
25 numbers and even percentages; is

1 TERRENI

2 that correct?

3 A. Yes, ma'am.

4 Q. And does it also report
5 racial demographic information?

6 A. It does.

7 Q. Okay. I want to focus on
8 the percentage of non-DoJ black
9 Hispanic people identified in this
10 chart, which is the far right
11 column.

12 Are you familiar with the
13 category non-Hispanic DoJ black?

14 A. Generally, yes.

15 Q. What do you understand it
16 to mean?

17 A. What I understand it to
18 mean is when we at the outset of the
19 process settled on a metric for a
20 percentage of black population for
21 redistricting we had to pick one of
22 the measures. And for consistency's
23 sake we tried to, as I recall, we
24 tried to replicate the measure that
25 was used by the Department of

1 TERRENI

2 Justice in the 2010-cycle, which
3 would have been non-Hispanic DoJ
4 black.

5 Q. Do you understand that
6 category to include people who
7 self-identify as black on the census
8 but do not identify as Hispanic in
9 addition?

10 A. Yes, ma'am.

11 Q. Are you familiar with a
12 category called any part black that
13 the census reports?

14 A. I am.

15 Q. What do you understand
16 about that category?

17 A. If a respondent in that
18 category identifies any part as
19 black they will be any part black,
20 meaning you could be Hispanic and
21 black and identify as -- and that
22 would be included in AP black.

23 Q. I have not asked you, were
24 you born in South Carolina?

25 A. No, ma'am.

1 TERRENI

2 Q. Where were you born?

3 A. In Italy.

4 Q. Did you live in Italy for
5 any period of time after you were
6 born?

7 A. Yes, ma'am.

8 Q. For how long?

9 A. I lived in Italy until I
10 was eight. I lived in Belgium for
11 another three years, moved to the
12 States when I was 11.

13 Q. Do you have dual
14 citizenship?

15 A. Yes, ma'am.

16 Q. And have you -- when you
17 moved to the States when you were
18 around 11 where did you move to?

19 A. Columbia.

20 Q. South Carolina?

21 A. Yes, ma'am.

22 Q. Have you lived in Columbia,
23 South Carolina since that time?

24 A. I have.

25 Q. In South Carolina would you

1 TERRENI

2 say that you are familiar -- strike
3 that.

4 Based upon having lived in
5 South Carolina for the better part
6 of your life and your professional
7 experience would you expect the
8 difference between the non-Hispanic
9 DoJ black category and the any part
10 black category in South Carolina to
11 have wide disparities?

12 A. No.

13 Q. So you expect them to be
14 similar in number in South Carolina?

15 A. Generally, yes.

16 Q. Looking at this Wren plan
17 this is one of the plans -- these
18 are statistics for one of the plans,
19 we don't have a map associated with
20 this statistical summary, but this
21 is one of the statistical summaries
22 from one of the plans that Adam
23 Kincaid sent to Andy Fiffick, is
24 that fair to say?

25 A. Yeah.

1 TERRENI

2 Q. Okay. Looking at the
3 summary how many of the seven
4 congressional districts reflected
5 within it have a non-Hispanic DoJ
6 black population that is above
7 50 percent?

8 A. None.

9 Q. What is the district that
10 has the highest percentage of
11 non-Hispanic DoJ black voters in
12 this Wren plan?

13 A. District 6.

14 Q. Is that the current
15 district represented by
16 Representative Clyburn?

17 A. Yes, ma'am.

18 Q. And is he the only black
19 congressional representative in
20 South Carolina?

21 A. Yes, ma'am.

22 Q. And in at least the past
23 two decades has he been the only
24 black congressional representative
25 in South Carolina?

1 TERRENI

2 A. I don't remember when
3 Senator Scott was elected to the
4 Senate or was appointed to the
5 Senate by Congress whether that was
6 in the past two decades or not, but
7 other than Congressman Scott if he
8 would fall in that time period, yes.

9 Q. And the federal Congress is
10 Representative Clyburn the only
11 black representative that has been
12 elected in at least the past two --
13 strike that.

14 Outside of CD 6 what is the --
15 can you read the percentages of
16 black voters in each of the other
17 districts, the approximate
18 percentages? So let's start with
19 CD 1, what is the percentage of
20 black voters?

21 A. 18.04 percent.

22 Q. What about CD 2?

23 A. 24.89.

24 Q. And CD 3?

25 A. 18.18.

1 TERRENI

2 Q. CD 4?

3 A. 18.54.

4 Q. CD 5?

5 A. 25.39.

6 Q. And CD 7?

7 A. 26.81.

8 Q. So is it fair to say in the
9 Wren plan the lowest BVAP population
10 is in CD 1?

11 A. Yes.

12 Q. And the highest is in CD 7
13 15 27 percent, is that fair to say?

14 A. No, it would be in
15 District 6.

16 Q. Oh, the second highest.
17 I'm sorry. The second highest
18 outside of CD 6 was that in CD 7 as
19 26 percent?

20 A. Yes, ma'am.

21 Q. Yes -- I think I cut you
22 off. Yes or no?

23 A. Oh, I'm sorry, yes.

24 Q. What else do you recall
25 about seeing the Wren plan? In

1 TERRENI

2 particular, what was your reaction
3 to it when you saw this map?

4 A. I didn't think it was
5 viable. We had already produced a
6 staff plan which I don't believe had
7 been posted to the website at that
8 point but we had already had a plan
9 that we were going to bring to the
10 subcommittee as a working start.
11 And I looked at both of those plans,
12 Wren, and maybe it was Palmetto,
13 very briefly and thought their
14 shapes were messy and were not an
15 improvement over this back plan.

16 Q. Did you communicate that
17 feedback about the Wren or the
18 Palmetto to Mr. Oldham?

19 A. Yes.

20 Q. Over a phone call?

21 A. Yes.

22 Q. Did you communicate that
23 feedback -- and did you ask him to
24 communicate that feedback to NRRT,
25 Mr. Kincaid in particular?

1 TERRENI

2 A. No.

3 Q. Did you receive guidance
4 from Jones Day about the Wren plan
5 before you communicated it back to
6 Mr. Oldham?

7 A. I don't believe so.

8 Q. Do you have any reason to
9 dispute that in this map Sumter is
10 split, Sumter as a county is split?

11 A. I don't know.

12 Q. What about Orangeburg, do
13 you recall whether Orangeburg was
14 split as a county in this Wren plan?

15 A. If you showed me the map, I
16 could, but I don't know. I can't --
17 from memory, no, I don't have any
18 recollection.

19 Q. Do you have any
20 recollection of how Beaufort was
21 treated in this Wren plan?

22 A. No.

23 Q. And what about Charleston,
24 the County of Charleston, do you
25 have any recollection of how

1 TERRENI

2 Charleston was treated, whether
3 whole or split, in this Wren plan?

4 A. I seem to recall the split.

5 Q. Do you recall how much
6 CD 2, Representative Wilson's
7 district, how CD 2 fared under this
8 Wren plan?

9 A. No.

10 Q. And what about CD 7, do you
11 have any recollection of how CD 7
12 fared under this Wren plan?

13 A. What do you mean by fared?

14 Q. Whether it was kept whole,
15 whether it was split, do you have
16 any recollection?

17 A. Of CD 7 whether it was
18 split?

19 Q. Um-hmm.

20 A. I'm sure it was changed.

21 Q. Changed from when?

22 A. The benchmark plan.

23 Q. And the benchmark plan is
24 referring to the 2011, the plan
25 adopted and enacted after the 2011

1 TERRENI

2 redistricting cycle?

3 A. Yeah. I mean -- everything
4 would be changed. I'm not sure how
5 we are talking about splitting the
6 district -- I'm not trying to be
7 cute. I need the map. If you show
8 me the map, I'll be glad to.

9 Q. So let's turn to tab 38,
10 which is the map and the associated
11 stats for the Palmetto map. This is
12 Bates stamped South Carolina 26370
13 to 71.

14 (Plaintiffs' Exhibit 4, Map,
15 Bates South Carolina 26370 to 71,
16 marked for identification, as of
17 this date.)

18 A. Yes, ma'am.

19 Q. Have you seen this map and
20 associated stats before?

21 A. I have seen the map. And I
22 probably saw the stats.

23 MR. GORE: Can I clarify the
24 record? I was just going to try to
25 clarify that with you. Ms. Aden,

1 TERRENI

2 did you intend for tab 58 to be
3 Plaintiffs Exhibit 3?

4 MS. ADEN: Yes.

5 MR. GORE: So I think we're on
6 4 then now. Just to clarify we are
7 at tab 38 and that's going to be
8 Exhibit 4. Is that correct?

9 MS. ADEN: Yes.

10 MR. GORE: Okay, thank you.

11 A. If I may just to complete
12 my answer. I saw the map.

13 Q. Yes.

14 A. And I may or may not have
15 seen the statistics at the time,
16 probably did, but I definitely saw
17 them in reviewing for this
18 deposition?

19 Q. So this Palmetto map was
20 one of the other maps that was part
21 of A and B.zip file that Mr. Kincaid
22 sent to Andy Fiffick at his gmail;
23 is that correct?

24 A. I think so, yes.

25 Q. Where did you see -- when

1 TERRENI

2 you said you had seen this map
3 before, where do you think you saw
4 it?

5 A. It would have been in the
6 redistricting office, probably
7 Senator Rankin's office.

8 Q. Is that also often referred
9 to as the map room or is that a
10 separate room?

11 A. That's a separate room.

12 Q. So you think you saw this
13 map in Senator Rankin's office,
14 that's the first time you saw it?

15 A. I think. That's my
16 recollection. And just to be clear,
17 there were times when we had a map
18 room and I believe it was on the 5th
19 floor. It was kind of a small
20 cramped room. When Senator Rankin
21 -- when they weren't in session,
22 Senator Rankin really didn't use his
23 office that much. He made his
24 office available to us as kind of a
25 de facto map room.

1 TERRENI

2 My recollection is I saw this
3 in Senator Rankin's office but I
4 mean -- there's no functional
5 difference between me seeing it
6 upstairs or downstairs except it was
7 a little less camped and a little
8 less muggy.

9 Q. Who was with you when you
10 saw that map in Senator Rankin's
11 office, do you recall?

12 A. I remember that Will
13 Roberts was there because he would
14 have loaded it and Andy Fiffick was
15 there. Paul may have been there. I
16 remember Andy and Will being there
17 for sure.

18 Q. Do you have any sense of
19 what the purpose of this map was?

20 A. Well, as I mentioned
21 earlier, Dale said that they had
22 this map that had the support of the
23 Republican members of the
24 congressional delegation and wanted
25 us to have it and I think he wanted

1 TERRENI

2 us to support it or propose it to
3 this subcommittee -- so that was --
4 I mean you have to ask Dale about
5 his purposes but I imagine it was to
6 -- I mean I understand his purpose,
7 it was to put forward a Republican
8 map that was supported by a
9 Republican congressional delegation.
10 Whether that was the case or not, I
11 don't know.

12 Q. Do you know whether this
13 map sort of reflected the particular
14 preferences of members of the
15 congressional delegation?

16 A. I just said I don't know.
17 It was represented as such, but I
18 don't know.

19 Q. And let me -- just to be
20 fair, did you -- you did not attend
21 any of those meetings with the
22 congressional delegation that
23 Mr. Oldham referenced?

24 A. I don't know -- I said
25 Mr. Oldham said this map had the

1 TERRENI

2 support of the congressional
3 delegation. I don't recall him
4 mentioning meetings. I didn't
5 attend them for sure if they took
6 place.

7 Q. Were you aware that there
8 were going to be meetings with the
9 congressional delegation to put
10 together proposed maps to be
11 submitted to the Senate?

12 A. No.

13 Q. Were you surprised that the
14 congressional delegation went to
15 Dale Oldham to propose maps to put
16 before the Senate rather than coming
17 to you or other members of the
18 Senate staff to propose maps to put
19 into the record?

20 MR. GORE: Object to form.

21 A. I don't think I had any
22 reaction to it one way or the other.
23 It didn't surprise me that Dale
24 might have communicated with the
25 Republican members of the delegation

1 TERRENI

2 about redistricting, that's
3 generally his job as I know it -- I
4 don't know. I wasn't surprised. I
5 wasn't expecting it either.

6 Q. Had you personally reached
7 out to members of the congressional
8 delegation to get their views about
9 how the congressional maps should
10 look like?

11 A. Had I reached out?

12 Q. Yes.

13 A. I don't recall reaching
14 out. I mean if I did have a call
15 from Joe Wilson, I don't think it
16 was initiated by me. I think it
17 might have been initiated by Joe and
18 Dalton Tresvant contacted the Senate
19 but not me on behalf of Congressman
20 Clyburn.

21 Q. So you had one conversation
22 with Congressman Wilson about
23 congressional map making, is that
24 what you are saying?

25 A. I think it was one, yes.

1 TERRENI

2 Q. And what was the purpose of
3 that conversation?

4 A. Congressman Wilson wanted
5 to express his -- some ideas about
6 redistricting those lines in the
7 second district.

8 Q. What were those ideas?

9 A. That he wanted to stay in
10 Richland, he wanted to stay in
11 Aiken. And if he had to expand, he
12 wanted to -- he was not adverse to
13 -- if his district was going to have
14 to move a little bit he was not
15 adverse to having to move to
16 Newberry.

17 Q. Moving to where?

18 A. Newberry County.

19 Q. Did he mention anything
20 about Fort Jackson in particular?

21 A. I don't recall if he
22 mentioned it expressly, but I would
23 have known from the past two cycles
24 that Fort Jackson was very important
25 to Congressman Wilson.

1 TERRENI

2 Q. Did he mention anything
3 about how to treat Beaufort in
4 relation to CD 2 one way or the
5 other?

6 A. I'm trying to remember. I
7 know he would have -- he said at
8 some point that he was under
9 Beaufort before and he enjoyed
10 Beaufort. But I think his
11 preference was not to have his
12 district run down to Beaufort mainly
13 just because of logistics.

14 Q. What did you do --

15 A. As I recall.

16 Q. What did you do with these
17 ideas from Representative Wilson?

18 A. We took them under
19 advisement. Like we took
20 Congressman Clyburn's ideas under
21 advisement from Dalton.

22 Q. Did you communicate the
23 ideas that representative --
24 Congressman Wilson shared with you?
25 Who did you communicate those ideas

1 TERRENI

2 to?

3 A. I might have communicated
4 them, I don't remember. I mean they
5 really weren't earth shattering.
6 That he wanted Fort Jackson was
7 something well-known and litigated
8 over before. That he wanted
9 Southern Orangeburg County, I
10 remember him saying that as well.
11 He's been saying. I mean that's
12 something that's been going for
13 20 years. So I don't know if I
14 communicated them at all. I don't
15 remember having any reason to talk
16 about it. It just didn't come up in
17 the future.

18 Q. Do you remember putting the
19 ideas about what Representative
20 Wilson wanted into the public record
21 at any of the hearings that the
22 Senate had on congressional map
23 making?

24 A. No, ma'am.

25 Q. Meaning you don't remember

1 TERRENI

2 or you did not do it?

3 A. I don't remember doing it.

4 Q. Looking at the second page
5 of this tab 38?

6 A. Yes.

7 Q. Does this similarly include
8 the statistical summary like with
9 the Wren plan that we just looked
10 at?

11 A. It does.

12 Q. And does it similarly
13 include the breakdown of the
14 non-Hispanic, the percentage of the
15 non-Hispanic 18 plus DoJ black
16 population figures for each of those
17 seven districts?

18 A. It appears to, yes.

19 Q. How many of the proposed
20 districts in the Palmetto plan have
21 a district above 50 percent of black
22 voters, non-Hispanic DoJ black
23 voters?

24 A. No.

25 Q. What is the next highest

1 TERRENI

2 percentage of black voters in any of
3 the other congressional districts
4 outside of CD 6?

5 A. Appears to be District 7,
6 the 24.82.

7 Q. What is the lowest
8 percentage of black voters in any of
9 the districts under the Palmetto
10 plan?

11 A. District 1, 17.08.

12 Q. Looking back at the first
13 page, can you tell what district
14 Beaufort is in in this map?

15 A. Appears to be mostly in
16 district -- well, it's all in
17 District 1, I believe, unless
18 there's a cut of my Hampton. I
19 believe it's all in District 1.

20 Q. And looking at Charleston
21 County can you tell where Charleston
22 County falls under the Palmetto
23 plan?

24 A. In District 1 and
25 District 6.

1 TERRENI

2 Q. Do you have any view of
3 whether congressional District 7 in
4 this map looks changed from the
5 benchmark map in 2011?

6 A. I would have -- honestly, I
7 would have to compare it but it
8 looks generally the same.

9 Q. Is there anything else
10 about the Palmetto plan that stands
11 out to you looking at it at this
12 moment?

13 A. In what way?

14 Q. Let's go back. How long do
15 you remember spending looking at
16 this map in Senator Rankin's office?

17 A. Five minutes, ten.

18 Q. Is there a reason why you
19 only looked at it for five or
20 10 minutes?

21 A. Yes, ma'am. We had already
22 drawn a plan that we were getting
23 ready to propose. We didn't see
24 this making any improvement. We
25 thought District 6, we had some

1 TERRENI

2 concerns about the way District 6
3 was drawn just in the form of change
4 and the regular shapes. And we
5 didn't see this as being the plan
6 that we needed to spend more time
7 worrying about.

8 Q. And you subsequently spoke
9 to Mr. Oldham again and did you, to
10 be clear, did you ask him what -- he
11 initiated the sending of a second
12 map known as the Jessamine map. Do
13 you recall that?

14 A. That was a few days later.

15 Q. Did you ask for that map or
16 did he just send it in response to
17 the feedback that you gave him about
18 the Palmetto and Wren?

19 A. It was not solicited by me.
20 He sent it in response to the
21 feedback about Palmetto and Wren and
22 the staff plan, the release of the
23 staff plan. And the release of the
24 staff plan would have been -- I
25 think he sent it after the staff

1 TERRENI

2 plan was released and then posted to
3 the website and I think his effort
4 as he described it was to, quote
5 unquote, improve on the staff plan.

6 Q. Did you at any time ever
7 contemplate asking Mr. Fiffick to
8 forward the maps from Mr. Kincaid
9 received on November 18th to the
10 Senate redistricting email that had
11 been released to the public?

12 A. I don't recall doing that
13 no.

14 Q. Do you recall asking any of
15 the Senate staff to forward these
16 two maps to any member of the Senate
17 redistricting subcommittee?

18 A. I don't recall doing that.

19 Q. As you sit here today, do
20 you know whether any member of the
21 Senate subcommittee has ever seen
22 the Palmetto or the Wren plan?

23 A. I believe Senator
24 Harpootlian saw them.

25 Q. How so?

1 TERRENI

2 A. Well, because he asked in
3 the subsequent subcommittee meeting
4 in which I believe the staff plan
5 was presented whether or not we had
6 had any communications from a
7 national committee and Andy Fiffick
8 told him that we had and he asked
9 what they were and he told him
10 generally speaking that we had
11 gotten something from this
12 organization I think he struggled to
13 name and told him that we had looked
14 at them and dismissed them and they
15 had not -- Senator Harpootlian was
16 concerned that the staff plan was
17 based on outside input. Andy told
18 him it wasn't and I believe in the,
19 I guess I shouldn't speculate, my
20 recollection is that in the
21 aftermath of that deposition -- not
22 deposition -- that subcommittee
23 meeting Andy would have -- gave him
24 those maps.

25 Q. But you don't know whether

1 TERRENI

2 Mr. Fiffick shared those maps with
3 Senator Harpootlian one way or the
4 other?

5 A. No, ma'am.

6 Q. And do you know whether, as
7 you sit here today, how any member
8 of the public would be aware of the
9 Palmetto and Wren plan being sent to
10 staff members of the Senate during
11 the redistricting process?

12 A. I do not.

13 Q. Let's look at tab 10, which
14 is another email from Adam Kincaid
15 and Andy Fiffick dated
16 November 24th, 2021, and is Bates
17 stamp number South Carolina Senate
18 ending in 3245 and this should be
19 Plaintiffs' Exhibit 5.

20 (Plaintiffs' Exhibit 5, Email
21 from Adam Kincaid to Mr. Fiffick,
22 Bates South Carolina Senate ending
23 in 3245, marked for identification,
24 as of this date.)

25 A. Yes, ma'am.

1 TERRENI

2 Q. Have you seen this before?

3 A. In preparing for this
4 deposition.

5 Q. Had you seen the contents
6 of what was being transmitted from
7 Mr. Kincaid to Mr. Fiffick, had you
8 seen that before preparing for this
9 deposition?

10 A. In the context of the
11 Jessamine zip file I believe so,
12 yes.

13 Q. Where would you have seen
14 the Jessamine zip file?

15 A. In the Senate offices,
16 probably I believe Senator Rankin's
17 office.

18 Q. Okay. Do you recall who
19 was with you when you saw this map?

20 A. I believe Andy would have
21 been and Will Roberts and I don't
22 recall anybody else but there could
23 have been other people.

24 Q. And is there any reason why
25 after the first email from Adam

1 TERRENI

2 Kincaid went to Andy Fiffick's gmail
3 Adam Kincaid continued to send it to
4 Mr. Fiffick's gmail and not his
5 Senate website -- his Senate
6 professional email?

7 A. Yes. Because what he was
8 doing was e-mailing a Google --
9 well, I can't speak for Mr. Kincaid
10 but the practical reason would have
11 been he was e-mailing a Google drive
12 account file which that Jessamine
13 zip file would be downloaded from
14 the Google website. And to do that
15 you had to sign in with a Google
16 email address. That's how this
17 whole gmail address got started
18 because as I'm understanding it --
19 understand it they could not have
20 signed in on the Senate board side.

21 Q. But as you sit here today,
22 are you aware whether this Jessamine
23 map as a pdf with associated
24 statistics, was that ever attached
25 to an email, a separate email and

1 TERRENI

2 center to the redistrict -- Senate
3 redistricting email website to be
4 part of that public record?

5 A. I don't think so.

6 Q. Is there a reason for that?

7 A. Yeah. The public
8 submission deadline had passed a
9 long time ago and this was just
10 somebody sending something in on
11 behalf of individual congressmen.
12 It wasn't being used. It wasn't the
13 basis for anything in the Senate --
14 in the Senate map drawing so we
15 didn't see the need to post it.

16 Q. But there was -- outside of
17 submission office maps there was
18 testimony, there were emails from
19 constituents and others being sent
20 after public submissions of maps, is
21 that fair to say?

22 A. It would have been emails.
23 I don't remember -- we had a map
24 submission process and people
25 generally submitted maps in

1 TERRENI

2 compliance with that process. That
3 doesn't mean that other people might
4 have walked in and said I'm thinking
5 about a map, especially if it was
6 something that was represented as
7 being from a member of the
8 congressional delegation. Did we
9 want to see it? Sure. But I don't
10 know because I wasn't present at
11 that meeting, but Dalton Tresvant
12 may have done the same thing for
13 Congressman Clyburn, that wouldn't
14 have been unusual in my experience
15 in redistricting.

16 If we had somehow used these
17 maps that is before as the basis for
18 something we proposed to the South
19 Carolina Senate for its
20 consideration with the subcommittee,
21 I believe we literally said, hey, we
22 got this map, you know, it has
23 congressional input and style. We
24 didn't think it -- we didn't think
25 it was useful. We didn't think it

1 TERRENI

2 was anything that was going to cause
3 us to change anything so basically,
4 you know, we took the email, we
5 loaded the map, looked at it, put it
6 aside. I mean we were trying to
7 move on.

8 Q. But you are making the
9 decision about whether it was the
10 basis for anything that you did.
11 The public has no way to analyze
12 whether or not it was the basis for
13 anything that you've done because
14 they have never seen the Jessamine,
15 the Wren or the Palmetto map; is
16 that correct?

17 A. Yeah.

18 Q. Did you share the Jessamine
19 map with Jones Day?

20 A. I don't recall.

21 Q. Are you aware of anyone who
22 shared the Jessamine map with Jones
23 Day?

24 A. I don't recall.

25 Q. Did you direct anyone to

1 TERRENI

2 share the Jessamine map with Jones
3 Day?

4 A. Again, I don't recall. It
5 wasn't that significant. It's very
6 possible I didn't bother.

7 Q. Did you share the Jessamine
8 map or direct anyone to share the
9 Jessamine map with any Senate
10 leadership?

11 A. I don't remember. I don't
12 think so.

13 Q. Do you recall asking any
14 Senate staff to share the Jessamine
15 map with any Senate leadership?

16 A. No, ma'am.

17 Q. After receipt of the
18 Jessamine map did you speak with
19 Mr. Oldham again about the map?

20 A. I don't recall. I probably
21 did.

22 Q. Did you provide him
23 feedback on the Jessamine map like
24 you did with respect to the Palmetto
25 and Wren map?

1 TERRENI

2 A. Well, I probably said Dale,
3 I'm sorry, we are just going to move
4 on. These were not detailed
5 discussions.

6 Q. Looking at tab 11, which is
7 now a third email between Adam
8 Kincaid and Mr. Fiffick dated
9 November 28, 2021, with Bates stamp
10 numbering South Carolina Senate
11 3246.

12 (Plaintiffs' Exhibit 6, Email
13 between Adam Kincaid and
14 Mr. Fiffick, Bates South Carolina
15 Senate 3246, marked for
16 identification, as of this date.)

17 A. Okay.

18 Q. Do you have any
19 understanding of why Mr. Kincaid
20 sent Mr. Fiffick another email four
21 days later from November 24th with
22 the file labeled Jessamine map?

23 A. No.

24 Q. Did you recall looking at
25 the attachment in this November 28th

1 TERRENI

2 email in Mr. Rankin's or anyone
3 else's office?

4 A. No, ma'am. I recall three
5 maps. Whether they did something
6 else with it I don't remember this
7 at all. November 28th, you'll have
8 to refresh my memory, but I would
9 add that at some point during that
10 period because we were talking about
11 Thanksgiving would have, you know,
12 been in this; is that correct?

13 If you'll allow me to, I'll
14 look at when Thanksgiving was. But
15 my only point is I caught COVID at
16 some point after that so I wasn't in
17 the office. I was in some
18 communication but it's possible this
19 happened when I had COVID.

20 Q. And how were you -- does
21 that mean you were not working on
22 congressional redistricting?

23 A. It doesn't mean that I
24 wasn't working on it. But it does
25 mean I may not have been around when

1 TERRENI

2 this was sent. I just don't -- I
3 don't remember a second Jessamine
4 email. I don't remember this.

5 Q. Do you recall in the
6 Jessamine map how many districts
7 above 50 percent there were?

8 A. No.

9 Q. Do you recall -- strike
10 that.

11 After you told Mr. Oldham stop
12 sending, essentially do not send any
13 more maps, did you have any other
14 conversations with Mr. Oldham about
15 congressional redistricting?

16 A. I never told Mr. Oldham not
17 to send any more maps. I don't
18 think that's my testimony.

19 Q. What -- did you have any --
20 after Mr. Oldham sent this map to
21 Andy Fiffick first on the 24th and
22 then again the same map on the 28th,
23 did you have any further
24 communications with Mr. Oldham about
25 congressional redistricting?

1 TERRENI

2 MR. GORE: Objection.

3 Mischaracterizes the document.

4 A. Again, I remember adjusting
5 that -- I remember telling him we
6 were ready, thank you for the map
7 but we think we are going to move
8 on. I don't recall any additional
9 conversations with Mr. Oldham about
10 congressional redistricting effort.
11 Certainly about any maps or anything
12 like that?

13 Q. And if you had it would
14 have been via phone?

15 A. Yeah.

16 Q. Do you recall whether
17 Mr. Oldham was ever invited by
18 anybody in the Senate Judiciary
19 staff to testify about the Palmetto,
20 Wren or Jessamine maps during the
21 subsequent hearings that were held
22 on South Carolina congressional
23 redistricting?

24 A. I recall that he was not.

25 Q. Do you recall whether he

1 TERRENI

2 was invited?

3 A. I recall that he was not
4 invited. That's what I just said.

5 Q. And do you recall was that
6 a decision made by the Senate staff
7 not to invite him or why given --
8 strike that.

9 Given the interest of a
10 congressional, Republican
11 congressional delegation in the
12 drawing of congressional lines did
13 you do anything to include
14 Mr. Oldham or the congressional
15 delegation in the consideration of
16 congressional maps after
17 November 28th?

18 MR. GORE: Object to form.

19 A. What we did to include
20 Mr. Oldham, the congressional
21 delegation and Republican, Democrat
22 or anybody else is they were free to
23 contact staff, members of the
24 subcommittee, come to explain and
25 testify if they wanted to. There

1 TERRENI

2 was no affirmative decision one way
3 or the other to not specifically
4 invite Mr. Oldham, Mr. Tresvant or
5 anybody else. They knew where to
6 find us.

7 Q. Could Mr. Oldham and R.T.
8 have submitted testimony, not maps,
9 not data or maybe maps and attached
10 data, could they have submitted that
11 as part of the public record and
12 subsequent hearings that were held
13 by the Senate in December and
14 January of 2021 and 2022?

15 A. To the extent that
16 testimony is received by the
17 subcommittee they were welcome to do
18 that.

19 Q. Let's look at tab 16.

20 MR. GORE: Before we move on
21 to that did you mean to mark tab 11
22 as an exhibit?

23 MS. ADEN: That should be
24 Plaintiffs' Exhibit 6, yes.

25 Q. So looking at tab 15, which

1 TERRENI

2 is titled 2021 Policy For Public
3 Plan Submission South Carolina
4 Senate Judiciary Committee
5 Redistricting Committee which was
6 adopted on September 17, 2021, it's
7 Bates stamped South Carolina Senate
8 3723 through 24. So this should now
9 be Plaintiffs' Exhibit 7.

10 (Plaintiffs' Exhibit 7, 2021
11 Policy For Public Plan Submission
12 South Carolina Senate Judiciary
13 Committee Redistricting Committee,
14 Bates South Carolina Senate 3723
15 through 24, marked for
16 identification, as of this date.)

17 A. Yes, ma'am.

18 Q. Take a moment to look at
19 this, please.

20 Are you familiar with this
21 document?

22 A. Yes, ma'am.

23 Q. Okay. What is it?

24 A. It's a public submissions
25 policy.

1 TERRENI

2 Q. And if you look at the
3 first page, could you read into the
4 record the sentence in I-B?

5 A. "All plans submitted to and
6 accepted by the redistricting
7 subcommittee will be made part of
8 the public record and will be made
9 available in the same manner as
10 other redistricting public records."

11 Q. So is it your position that
12 because -- well, strike that.

13 Let me have you look at
14 paragraph 3A and read that aloud
15 into the record. It begins with
16 "Via plan"?

17 A. "Via plan for the full
18 state or for an amendment to an
19 existing plan it should be a
20 complete amendment to the plan not
21 just a proposal for the district. A
22 plan should stand as a complete
23 statewide plan for redistricting,
24 i.e., all pieces of geography must
25 be accounted for in the same" --

1 TERRENI

2 this seems to say some district --
3 "in some district."

4 Q. And 3B provides the portal
5 or the means by which plans be
6 submitted and identifies the
7 redistricting.south
8 Carolina.Senate.gov website for
9 submissions. Is that fair to say?

10 A. Yes, ma'am.

11 Q. And it provides that plans
12 have to be in a particular format
13 and with particular naming
14 conventions and other things to be
15 submitted. Is that fair to say?

16 A. It does.

17 Q. And so it's your position
18 that because the -- or is it your
19 position that because the maps sent
20 by Adam Kincaid via his
21 communications with Mr. Oldham, that
22 because they violated this policy,
23 is that the reason why they were not
24 publicized on the Senate's website
25 or accepted by the Senate?

1 TERRENI

2 A. No.

3 Q. Then is the reason because
4 of the timing of when they were
5 provided?

6 A. Yeah.

7 Q. Okay. So the timing is the
8 basis for why these did not appear
9 on the Senate's website and were
10 purportedly not accepted by the
11 Senate. Is that fair to say?

12 A. No. It's the context. And
13 by that I'll try to explain. We had
14 set a public submissions deadline.
15 We had hearings on publicly
16 submitted plans. We did all that.
17 We were under some time pressure to
18 produce a congressional
19 redistricting plan because of the
20 time we were aware of the core
21 express of desire for plans to be
22 submitted by January 18th. The
23 Senate didn't do anything with
24 redistricting until after it had
25 essentially completed, maybe not

1 TERRENI

2 passed, and I'm speaking about
3 congressional, its Senate plan.

4 So at that point we felt some
5 time pressure to get things going.
6 We did a -- we had the public
7 submissions submitted. We held --
8 we were holding hearings on the
9 plans. Then at the last minute as
10 we were getting ready to post the
11 staff plan we get this call from
12 Dale that said I had this plan that
13 all the congressional delegations or
14 at least all the Republicans had
15 turned out that he represented as
16 having supported.

17 So at that point we had a
18 choice of do we want to see this
19 plan that supposedly is relevant to
20 two out of seven congressmen in the
21 state or do we tell him we don't,
22 then I said well send it on. We
23 will take a quick look at it. We
24 were about to release the staff
25 plan. So didn't make sense to me to

1 TERRENI

2 ignore it.

3 I believe at one point I had
4 said, well, Dale you can submit it
5 through the public website. Dale
6 for one reason or another may have
7 been reluctant do to that. We just
8 said, well, fine, send it to us, we
9 will take a look at it. And then
10 when we looked at it, it became very
11 clear to us it was not going to be
12 anything we used.

13 So really, I mean I never gave
14 much thought to where it should be
15 on the public website or not. And
16 it wasn't. Everybody knew about it
17 by the subsequent subcommittee
18 meeting because at that point that's
19 when Andy and Senator Harpootlian
20 had this exchange. We were focused
21 on moving the staff plan on. I mean
22 these plans just, they were kind of
23 dead letters at that point. That's
24 why we didn't post them. But, you
25 know, that's just what happens.

1 TERRENI

2 Q. But this policy was in
3 place before November 18th when Adam
4 Kincaid sent the first two maps to
5 Andy Fiffick, correct?

6 A. Yes, ma'am.

7 Q. So based upon this policy
8 and the timing and the form by which
9 Adam Kincaid was sending those maps,
10 they should not have been considered
11 or accepted by the Senate according
12 to this policy; is that correct?

13 MR. GORE: Objection.
14 Mischaracterizes testimony and
15 document.

16 MS. ADEN: I'm asking a
17 question. I didn't characterize
18 his testimony.

19 Q. According to this policy --

20 A. No, I will disagree with
21 that. Let me explain why. And
22 there's some shortcuts involved in
23 this. But the policy was a public
24 submissions policy. We named the
25 organization such as yours could

1 TERRENI

2 come submit a plan and testify in
3 support of it. That's how we
4 conceived it.

5 Dale Oldham calls and says
6 there's this plan that's got the
7 support of the congressional
8 Republican delegation. Maybe it
9 does, maybe it doesn't. But in the
10 pressing deadline that we had we
11 thought well, let's see it. Whether
12 Dale had the support of it -- I mean
13 whether -- whether Dale sent it or
14 we could have gone back and said we
15 will get a senator to submit it to
16 us as an amendment, he certainly
17 could have done that. I mean that's
18 common sense if he's putting
19 something from the Republican
20 delegation in the same way that if
21 Clyburn or another member of the
22 Senate had come in and said we want
23 you to look at this map as something
24 that could be a perspective
25 amendment, we were going to look at

1 TERRENI

2 it.

3 So did we go by the letter of
4 this policy, I don't think we gave
5 much thought to it. We thought we
6 best look at -- it's been told to us
7 that it's something that could be
8 supported by a congressional
9 delegation. We had not heard from
10 most of them up until that point and
11 we thought we better take a look at
12 it. And so we did. And that's kind
13 of where we are. That's why the
14 policy was -- I mean that's how the
15 policy fits into this.

16 Q. Turn to the text of this
17 policy, the NRRT submission on
18 November 13th, would have violated
19 it, correct?

20 A. No.

21 Q. According to --

22 A. The text of his policy is
23 referring to the public submissions
24 process. The NRRT submission was in
25 my mind something that was more akin

1 TERRENI

2 to the legislative submission
3 policy. Congressmen somehow in a
4 congressional redistricting cycle
5 are more akin to members. Now,
6 whether or not that was an accurate
7 portrayal, that was a decision we
8 made.

9 Q. So is it your position that
10 the NRRT is equivalent to a
11 legislative submission by a member
12 of the South Carolina legislature?

13 A. No.

14 Q. Is it your position that
15 Dale Oldham is a representative, an
16 official representative of the
17 Republican delegation for South
18 Carolina?

19 A. No.

20 Q. Is it your position that
21 the submission of a map, the
22 Jessamine map by the NRRT on
23 November 24th was not in violation
24 of the policy, this 2021 policy that
25 we are looking at?

1 TERRENI

2 A. I don't think it was.

3 Q. Have you heard of the
4 American Legislative Exchange
5 Council, ALEC?

6 A. Yes.

7 Q. How have you heard about
8 them?

9 A. I'm aware that the American
10 Legislative Exchange Council is an
11 organization that is mostly
12 conservative, that provides access
13 over a think tank for legislators
14 who sometimes go to conferences or
15 receive legislation from them.

16 Q. Do you know whether NRRT
17 provided data -- actually strike
18 that.

19 Do you know who Reagan Kelley
20 is?

21 A. Yes.

22 Q. Who is it?

23 A. He is an employee of the
24 Senate Republican caucus. I don't
25 know his specific title but he was

1 TERRENI

2 kind of their guy.

3 Q. Did you communicate with
4 Mr. Kelley about congressional
5 redistricting?

6 A. No.

7 Q. Do you -- are you aware
8 that NRRT, whether NRRT provided
9 Mr. Kelley data related to
10 redistricting in South Carolina this
11 cycle?

12 A. No.

13 Q. Have you seen any data that
14 NRRT may have provided to Mr. Kelley
15 about congressional or any other
16 redistricting this cycle?

17 A. No.

18 Q. Are you aware of ALEC's
19 involvement in South Carolina
20 redistricting following the 2020
21 census?

22 A. No.

23 Q. Beyond who we've already
24 discussed did you or the Senate hire
25 any other consultants to help with

1 TERRENI

2 the congressional redistricting
3 cycle?

4 A. No.

5 Q. Are you familiar with Sean
6 Trende?

7 A. Not personally. I believe
8 -- no. Am I familiar with him? I
9 mean I have heard of him.

10 Q. What have you heard about
11 him?

12 A. That he may be an expert
13 involved in the litigation of this
14 lawsuit.

15 Q. Have you reviewed any -- he
16 is an expert for defendants in the
17 litigation. Have you reviewed any
18 of his reports or analyses in the
19 context of this litigation?

20 A. No.

21 Q. Beyond what we've discussed
22 then, did you or the Senate hire any
23 other experts to facilitate the work
24 of redistricting by the Senate or
25 Congress during this redistricting

1 TERRENI

2 cycle?

3 A. You mean during the cycle?

4 Q. Yes.

5 A. To facilitate the work of
6 the committee?

7 Q. Of the Senate.

8 A. Of the Senate? Not that I
9 recall, no.

10 Q. Do you know who Thomas
11 Brunell is?

12 A. I recall the name.

13 Q. Did he do any work on
14 behalf of the Senate for
15 congressional redistricting?

16 A. No.

17 Q. I want to show you what is
18 in tab 57, which should be the
19 retainer on December 2019.

20 A. Yes.

21 Q. This is Bates stamped South
22 Carolina Senate 4353 to 4354.

23 (Plaintiffs' Exhibit 8,
24 Charles Terreni representation
25 letter, Bates South Carolina Senate

1 TERRENI

2 4353 to 4354, marked for
3 identification, as of this date.)

4 Q. Do you recognize this
5 document?

6 A. I do.

7 Q. And this should be
8 Plaintiffs' Exhibit 8. What is this
9 document?

10 A. That's my representation
11 letter.

12 Q. Okay. And what is the
13 scope of your representation
14 according to this letter?

15 A. To advise -- "During the
16 course of my representation I will
17 advise and report directly to you as
18 chairman of the Senate Judiciary and
19 such other individuals" -- excuse
20 me, I'm sorry, it's the first
21 paragraph. "To advise and represent
22 the South Carolina Senate in
23 connection with redistricting
24 following the 2020 Decennial
25 census."

1 TERRENI

2 Q. And is that scope
3 consistent with what you ultimately
4 did during the redistricting cycle
5 followings the 2020 census?

6 A. Yes.

7 Q. Okay. And as a practical
8 matter did you report directly to
9 the recipient of this letter,
10 Chairman Rankin of the South
11 Carolina Senate?

12 A. Yes.

13 Q. Did you report to anybody
14 else?

15 A. No.

16 Q. What does it mean to report
17 to Senator Rankin, what does that
18 encompass?

19 A. Senator Rankin gave broad
20 direction as to the redistricting
21 process. If there were policy
22 decisions to be made about
23 redistricting Senator Rankin was the
24 ultimate decision-maker.

25 Q. Did Senator Rankin give you

1 TERRENI

2 policy direction regarding
3 congressional maps this cycle?

4 A. Sometimes.

5 Q. What did that include?

6 A. Senator Rankin sought in
7 terms of the 7th District, the 7th
8 District was pretty much a settled
9 matter from the last redistricting
10 cycle and his desire was to not see
11 a lot of change in it. Senator
12 Rankin otherwise asked us to work
13 with the members and come up with a
14 viable and help them develop a
15 viable redistricting plan that could
16 pass the Senate.

17 I'm sure there were other
18 discussions but I mean that's the
19 general -- that would have been the
20 general direction that he gave.
21 Senator Rankin was involved along
22 the way as things went and arguments
23 were made and we took our cues from
24 him.

25 Q. Were those directions

1 TERRENI

2 committed writing?

3 A. Mostly not.

4 Q. Who were those directions
5 communicated to?

6 A. Me, Andy. I mean, his
7 staff, Senate Judiciary staff.

8 Q. Did you or anyone at your
9 direction communicate those policy
10 directions to the public?

11 A. I don't recall doing so,
12 no.

13 Q. Did you implement at least
14 the policy decisions that you just
15 identified, keep no change to CD 7
16 -- well, that was really the only
17 policy direction I saw or heard.
18 Did you implement that policy
19 guidance?

20 A. Generally, yes.

21 Q. Did you implement it when
22 the Senate staff developed the
23 initial staff plan?

24 A. Implementing is a strong
25 word. There wasn't a lot of, from

1 TERRENI

2 our perspective a lot of reason to
3 change District 7 but, yes, you
4 could say that.

5 Q. What about --

6 A. I'm sorry, you could say
7 that. Yes, I'm sorry.

8 Q. What about with the Senate
9 Amendment 1 by Senator Campsen, do
10 you know if keeping CD 7 alone, was
11 that implemented in the context of
12 that proposed map?

13 A. I believe it was.

14 Q. And in the enacted map was
15 that guidance implemented keeping
16 CD 7 substantially similar. And
17 when we are saying substantially
18 similar, it's substantially similar
19 to the benchmark map from 2011?

20 A. Yes, ma'am. Yes.

21 Q. Would it be fair to say
22 that if that guidance was not
23 written or communicated to the
24 public, that the public could
25 potentially propose maps that change

1 TERRENI

2 CD 7 without an awareness that that
3 was a policy recommendation by the
4 chair of the Senate Judiciary
5 Committee?

6 A. I'm not sure it is. I
7 believe the chair had expressed that
8 policy preference publicly. In any
9 case, it was never an absolute. He
10 was saying I would like CD 7 to be
11 kept more or less the same just as
12 any of the other 45 members could
13 come to us and say I'd like to do
14 this or that.

15 He was also the chair, we took
16 our cues from him. He could also be
17 outvoted. But I believe Senator
18 Rankin was pretty open about
19 thinking congressional District 7
20 was a settled matter.

21 Q. You mentioned that Senator
22 Rankin also asked for numbers. What
23 type of numbers?

24 A. I don't think I mentioned
25 that. I could stand corrected if

1 TERRENI

2 you want to.

3 Q. I believe you mentioned
4 that you talked about CD 7 no change
5 and then you mentioned something
6 about numbers and I wanted you to
7 explain more, like he asked for some
8 numbers, what you meant by that?

9 A. I don't recall saying that.
10 If I did, I stand corrected. What I
11 believe I said is we took cues from
12 Senator Rankin at different stages
13 of the process.

14 Q. Did Senator Rankin ever ask
15 you for data?

16 A. He may have.

17 Q. Do you recall providing him
18 data or do you recall asking a
19 member of the Senate staff to
20 provide him data?

21 A. I'm sure Senator Rankin may
22 have asked for data and either I may
23 have asked a member of the staff to
24 or he could have asked them
25 directly. He didn't have to go

1 TERRENI

2 through me.

3 Q. Did you develop or did you
4 ask a member of the Senate staff to
5 develop materials to share with
6 Senator Rankin or any other senator?

7 A. Senator Rankin and other
8 senators on occasion requested
9 materials of us which I may or may
10 not have conveyed, but I mean,
11 again, it wasn't a formal. So Andy
12 was always in contact with Senator
13 Rankin, Will, anybody else. So he
14 could have asked them as well.
15 Materials at various points in time
16 both prepared for Senator Rankin,
17 yeah, sure.

18 Q. Did those materials include
19 race data?

20 A. The statistical reports
21 that included our -- on our plans
22 often included race data. And yes,
23 some of the supporting materials
24 would have included race data.

25 Q. Did they include talking

1 TERRENI

2 points for around maps and different
3 proposals?

4 A. Yes.

5 Q. Did you review the data and
6 any talking points before they were
7 shared with legislative members?

8 A. Often, yes. Most of the
9 time.

10 Q. Do you know whether Jones
11 Day reviewed data and talking points
12 before they were shared with
13 legislators?

14 A. Sometimes, yes.

15 Q. Do you know if Jones Day
16 reviewed maps, proposed maps before
17 they were shared with legislators?

18 A. Sometimes.

19 Q. Would it be you or someone
20 else who would determine when to
21 share data and/or maps and/or
22 talking points with Jones Day?

23 A. It was generally me and
24 Andy.

25 Q. What was your basis for

1 TERRENI

2 determining when to share that
3 information with Jones Day?

4 A. There could be a lot of
5 reasons. One might be we wanted
6 Jones Day to check our work, make
7 sure they didn't see any legal
8 pitfalls to what we were advancing.
9 We could want to confirm our own
10 impressions with other things that
11 have been put in front of us or
12 options that had been asked --
13 requested. It was generally that.
14 Wanting legal advice from Jones Day
15 on various proposals whether they
16 came from us or from other people.

17 Q. Did you ever ask to confirm
18 that the data that you relied upon
19 was accurate?

20 A. Of Jones Day?

21 Q. Yes.

22 A. I don't think so, no.

23 Q. Did you ever ask Jones Day
24 to confirm the appropriateness of
25 any of the data that you relied

1 TERRENI

2 upon, you meaning the Senate relied
3 upon for proposed maps?

4 A. Yes.

5 Q. Did you do that by email or
6 by phone?

7 A. I don't remember
8 specifically. It could have varied
9 depending on the data we were
10 discussing.

11 Q. Do you consider the
12 question of whether communities of
13 interest -- are you familiar with
14 what communities of interest are?

15 A. Yes.

16 Q. What are they?

17 A. They were defined in our
18 guidelines but they are generally
19 groupings of, demographic groupings
20 of individuals that are defined by
21 geographical boundaries, common
22 shared interests, vernacular history
23 and so forth. We have a more
24 complete definition in the
25 guidelines, but that's, generally

1 TERRENI

2 speaking, what you want, people with
3 some common interest of some sort.

4 Q. Did you -- during your work
5 on congressional redistricting did
6 you consider whether communities of
7 interest were respected in various
8 proposals by the legislature or by
9 the public?

10 A. Yes, we tried to.

11 Q. Did you consider the
12 question of whether communities of
13 interest were respected to be a
14 legal question?

15 A. It was partly a legal
16 question, partly a factual issue.

17 Q. To the extent there was a
18 factual question would you seek
19 guidance from Jones Day about
20 whether or not a communities of
21 interest was respected?

22 A. No.

23 Q. How would you determine if
24 it was factual or legal, would you
25 do that, make that determination,

1 TERRENI

2 you or you in consultation with
3 Senate counsel or how would you
4 determine whether it was a legal or
5 factual question?

6 A. There was never such a
7 distinction, such a rigid
8 distinction, but I wouldn't have
9 consulted Jones Day about
10 communities of interest in South
11 Carolina unless I was concerned
12 about the legal defensibility of
13 asserting a particular community of
14 interest or the description somebody
15 else gave a community of interest
16 and whether it was something that
17 could be legally justified or
18 supported in litigation which we
19 anticipated.

20 Q. Do you know what contiguity
21 is?

22 A. Yes.

23 Q. What is it?

24 A. It's the connection between
25 district boundaries which under our

1 TERRENI

2 policies can really be point to
3 point contiguity as I recall or
4 contiguity by water. But it's the
5 requirement in general that
6 districts be contiguous meaning that
7 districts touch each other. You
8 couldn't have District 1 in the
9 northeastern corner of the state and
10 then replicated in the southwestern
11 corner of the state. Absent some
12 legitimate connecting geography such
13 as water.

14 Q. Did you consider that to be
15 a legal or a factual question
16 whether a district was contiguous
17 with another district?

18 A. Both.

19 Q. What about core
20 constituency, are you familiar with
21 that term?

22 A. Yes.

23 Q. What do you understand that
24 to mean?

25 A. Core constituency is

1 TERRENI

2 generally, can generally be
3 described as the percentage or the
4 portion of the district, of an old
5 district that's retained in a new
6 district. Some people may have
7 variations on it, but that's
8 basically what it is, it is the
9 heart or the bulk of the former
10 district preserved in any district.

11 Q. And whether an analysis of
12 -- an analysis of -- strike that.

13 An analysis of whether the
14 core of a district that was being
15 proposed how it changed this cycle
16 as compared to under the benchmark
17 plan, is that a factual question or
18 a legal question in your view?

19 A. Both.

20 Q. What makes it a legal
21 question?

22 A. Well, core constituencies
23 have been described and defined to
24 some extent in the case law of South
25 Carolina. Specifically I can think

1 TERRENI

2 of Carlson [ph] County versus
3 McConnel case in which they
4 discussed core constituency in some
5 detail involving how long, what
6 percentage of the district remained
7 districts or parts of the district
8 that were in a district before.

9 So you asked core
10 constituency. We can run a core
11 constituency report and that's a
12 factual question in assessing maps
13 in terms of a percentage. Then
14 there's a second question of, you
15 know, John, how is the court going
16 to view this if it's litigated or
17 how significant is this factor. I
18 think those are legal questions and
19 ones that we were discussing with
20 Jones Day.

21 Q. What about maintaining
22 counties, cities and/or VTDs whole
23 or whether to split them, in your
24 view is that both a factual and a
25 legal question?

1 TERRENI

2 A. Yeah, it is.

3 Q. So with respect to many of
4 these that we just described it's a
5 factual question whether or not they
6 are split or not split, whole or not
7 split whole and your view --

8 Yes, I'm sorry?

9 A. No, I was nodding along,
10 sorry, go ahead.

11 Q. And then it becomes a legal
12 question in your view about whether
13 or not that split or that keeping of
14 a district as similar, you know, the
15 amount of how a district retains or
16 is not -- or is different from a
17 benchmark plan the degree to whether
18 or not that happens or if that
19 happens is a legal question in your
20 view or whether it's appropriate for
21 it to split or not split, whether
22 it's appropriate to retain this much
23 or that little, for you that's a
24 legal question of how the courts
25 will view those decisions?

1 TERRENI

2 A. Yes.

3 MR. GORE: Object to form.
4 You can answer.

5 A. Thank you. The
6 appropriateness or the legality, the
7 defensibility of one feature or
8 another of the plan would be core
9 constituency splitting counties, the
10 circumstances under which it's done,
11 the reasons for it, I think those
12 are legal questions, at least in the
13 context that they were posed to
14 Mr. Gore.

15 The fact that a plan splits a
16 county five times that's sort of a
17 factual issue that's generated on
18 Maptitude before. So are these
19 concepts like communities of
20 interest, I think they are a little
21 hazier, but I think it's safe to say
22 I didn't rely on Mr. Gore for his
23 knowledge of South Carolina.

24 Q. But you might ask -- you
25 might -- is it fair to say that you

1 TERRENI

2 might have done an analysis of how
3 many splits there were of a
4 particular county or city, and you
5 might have both shared that data
6 with Jones Day and asked whether or
7 not that is defensible, both of
8 those could have been done in the
9 context of your communications with
10 Jones Day?

11 MR. GORE: I'm just going to
12 put an objection on the record. We
13 are getting really close to topics
14 and conversations that may have
15 been covered by attorney-client
16 privilege. So if the witness can
17 answer that without divulging
18 privileged conversations, he can do
19 so.

20 A. I'm sorry, can you repeat
21 that question?

22 Q. Yes. Would you have on
23 behalf of the Senate have asked
24 Jones Day or have shared with Jones
25 Day factual information about the

1 TERRENI

2 number of splits in a particular
3 plan?

4 A. Yeah.

5 Q. Would you have asked Jones
6 Day to confirm whether those numbers
7 that you shared were accurate or
8 not?

9 A. No.

10 Q. You would -- would you have
11 expected that they would have
12 checked the accuracy of data that
13 you shared with them?

14 A. No.

15 Q. But you would have asked
16 them whether or not that number of
17 splits is defensible or not, is that
18 fair to say?

19 A. I could have, yeah. I
20 could have. I mean I -- when it
21 comes to a number of splits I mean
22 we had Maptitude and Will Roberts
23 for that. I didn't need John Gore
24 for that. You know, the Senate plan
25 with various attributes and I'd say

1 TERRENI

2 the question generally was give us
3 your legal opinion whether this plan
4 complies with redistricting law and
5 whether it will be defensible in
6 litigation.

7 Q. Just to be clear, any of
8 the plans that you would have sent
9 to Jones Day would have included
10 statistical data that captured some
11 racial demographics?

12 A. No. It could have. It
13 didn't necessarily. It's possible.
14 Often do. But not -- we wouldn't
15 have mandate. It wasn't pertinent
16 to the question so we probably
17 wouldn't have sent it. I don't
18 know.

19 Q. Looking back at this
20 retainer letter.

21 A. Yes, ma'am.

22 Q. How would you have
23 communicated or reported to Chairman
24 Rankin, by phone, by text, by email
25 or combination thereof?

1 TERRENI

2 A. Combination. And in
3 person.

4 Q. Are you still employed by
5 the Senate?

6 A. I never was employed by the
7 Senate unless you count my time as a
8 Senate page. I'm under contract.
9 Is the Senate paying my bills now,
10 yeah.

11 Q. Are you still -- is this
12 retainer agreement still in effect
13 with respect to your work with the
14 Senate?

15 A. Yes.

16 Q. Looking at the second
17 paragraph it reflects your hourly
18 rate?

19 A. Yes.

20 Q. And shares the process by
21 which you will bill for your work on
22 behalf of the Senate. Who do you
23 bill?

24 A. The Senate. I mean
25 specifically?

1 TERRENI

2 Q. Who did you send the bill
3 to?

4 A. The bill goes to Andy
5 Fiffick and the Senate clerk.

6 Q. Is it fair to say that
7 based upon this retainer you bill on
8 a monthly basis?

9 A. I generally do, yes.

10 Q. Okay. Do you know the
11 source of those funds?

12 A. The State of South
13 Carolina.

14 Q. And this is, reflects a
15 retainer from December 30, 2019, is
16 that fair to say? At the top of
17 South Carolina Senate?

18 A. Yes, ma'am.

19 Q. 4353, it's dated
20 December 30, 2019?

21 A. Yes, ma'am.

22 Q. Do you know approximately
23 how much you have billed for your
24 work on redistricting under this
25 retainer since December 30, 2019?

1 TERRENI

2 A. No, ma'am.

3 Q. Would it be fair to say
4 that you have at least attempted to
5 on a monthly basis provide bills to
6 the Senate, Andy Fiffick or someone
7 else, on a monthly basis since
8 December 30, 2019?

9 A. Generally speaking. If
10 there was a month without a lot of
11 work I might have held the bill
12 until the next month, but we
13 generally bill monthly.

14 Q. Do you know whether your
15 monthly bills, would they range in
16 amount of \$5,000, \$10,000, \$20,000?

17 A. It would vary. I mean back
18 in 2019 they might have been very
19 small. During -- after the PL data
20 came out they would have been
21 substantially more because I was
22 spending more time. I don't really
23 -- I mean -- that's my answer. I
24 don't know.

25 Q. Between November and

1 TERRENI

2 January, November of 2020 and
3 January of 20 -- I'm sorry, November
4 of 2021 and January of 2022, do you
5 know approximately how much you
6 would have billed for that time when
7 congressional redistricting would
8 have been pretty active with the
9 Senate?

10 A. 70,000 maybe. Somewhere
11 70, a hundred. I don't -- somewhere
12 in that range.

13 Q. And based upon this
14 retainer there's no cap to the
15 amount that you can bill, is that
16 fair to say?

17 A. \$300 an hour.

18 Q. And there's been no
19 addendum to this agreement, is that
20 fair to say?

21 A. No, ma'am.

22 MS. ADEN: Okay. We have been
23 going for a bit. It's 1:08. We
24 started at 10:00. For the purposes
25 of the court reporter if we could

1 TERRENI

2 go off the record for a second and
3 talk about whether or not it would
4 be a good time for us to take a
5 short lunch. I know we want to
6 keep pushing through the day, I
7 imagine, but I would love to
8 respect everyone's need for blood
9 sugar.

10 (Luncheon recess: 1:08 p.m.)

1 TERRENI

2 A F T E R N O O N S E S S I O N

3 (Time noted: 1:41 p.m.)

4 C H A R L E S T E R R E N I ,

5 resumed and testified as follows:

6 EXAMINATION BY (Cont'd.)

7 MS. ADEN:

8 Q. So I'd like to focus your
9 attention on some questions about
10 the Senate redistricting criteria
11 and guidelines. If you look at tab
12 1, which is an email from Paula
13 Benson to Senator Campsen, it copies
14 you Mr. Terreni with the subject
15 adopted guidelines and description
16 of Thornburg versus Gingles and NCSL
17 redbook dated January 18, 2022, it
18 has two attachments, it's Bates
19 stamped South Carolina Senate 22356
20 to 22364 and this will be
21 Plaintiffs' Exhibit 9 I believe.

22 (Plaintiffs' Exhibit 9, Email
23 from Paula Benson to Senator
24 Campsen with attachments, Bates
25 South Carolina Senate 22356, marked

1 TERRENI

2 for identification, as of this
3 date.)

4 Q. Do you have that?

5 A. Yes, ma'am.

6 Q. What is your understanding
7 of what these documents are?

8 A. Well, one is an email from
9 Paula to Senator Campsen sending him
10 the guidelines adopted by the
11 subcommittee, an excerpt from the
12 NCSL redbook which is the NCSL's
13 guide on redistricting discussing
14 Thornburg versus Gingles.

15 Q. I want to focus your
16 attention on page 2, South Carolina
17 Senate 22357. Looking at that first
18 paragraph at the top of the page is
19 it fair to say that the Senate
20 guidelines identified the purpose of
21 them is to: "A, the redistricting
22 subcommittee and interested parties
23 in developing and evaluating
24 redistricting plan proposals"?

25 A. Yes.

1 TERRENI

2 Q. Based on that stated
3 purpose would you agree that the
4 public would reasonably look to this
5 document to understand the
6 guidelines that the Senate would be
7 used to develop and consider public
8 proposals?

9 A. Yes.

10 Q. To evaluate public
11 proposals?

12 A. In part.

13 Q. What else would it look to
14 besides these guidelines if it's in
15 part?

16 A. Well, their policy
17 preferences and political
18 considerations. In any
19 redistricting process these are
20 factors that are going to be
21 considered in the end backdrop to
22 that.

23 Q. And if those policy
24 preferences and political
25 considerations that are in the

1 TERRENI

2 backdrop are not reduced to writing
3 in the context of South Carolina's
4 redistricting process's cycle would
5 it be fair to say that the public
6 would only know about those
7 preferences and policy
8 considerations if they were made on
9 the public record at a hearing or on
10 one of the documents that the Senate
11 posted to its website?

12 A. The public in general, I
13 mean members of the public could
14 communicate with individual members
15 of the Senate and I assume they have
16 conversations about what they would
17 like or not like. The point being
18 these are sort of common guidelines
19 that were adopted by the Senate for
20 the redistricting process.

21 Now, one individual senator
22 may have a different view of what
23 the resulting plan might look like
24 from the other. They may have
25 several views. Are every one of

1 TERRENI

2 those views and policy preferences
3 expressed in guidelines, no. I mean
4 they couldn't be and they are not
5 meant to be.

6 Q. Could these guidelines be
7 modified?

8 A. By the Senate subcommittee.

9 Q. Could they? There's no
10 rule that prevents them from being
11 modified after September 17th, 2021;
12 is that correct?

13 A. Correct.

14 Q. And there's no prohibition
15 on reducing -- let me strike that.

16 Do you think it would be fair
17 to the public if a policy preference
18 became important to the decision
19 about whether a map would be adopted
20 or not for that to be publicized in
21 a way acceptable to the general
22 public?

23 MR. GORE: Object to form.

24 A. I'm struggling to
25 understand the question. Would it

1 TERRENI

2 be fair?

3 Q. Yes. Would it be --

4 A. It could be fair. It could
5 be unfair. I mean that's not my --
6 do I think it would be? I mean, no.
7 If what you are talking about is
8 what every representative, elected
9 official expresses in the map
10 drawing process, I mean if they
11 wanted to do that they are free to
12 do it, but that's not the system we
13 have. I mean they -- I'm not sure
14 what we are saying here.

15 Q. Do you consider these
16 criteria, these guidelines binding
17 on a subcommittee's decision-making
18 with respect to congressional maps?

19 A. I think the subcommittee is
20 free to do what the subcommittee
21 wants to do. They pass guidelines.
22 If they want to deviate from the
23 guidelines and they take a vote to
24 do it, they are free to do it.

25 Q. And as far as you are

1 TERRENI

2 aware, was there any vote to deviate
3 from these guidelines during this
4 past redistricting cycle?

5 A. Not that I'm aware of.

6 Q. Based upon the stated
7 purpose would you agree that the
8 public would reasonably look to this
9 document to understand the criteria,
10 the guidelines, the Senate would be
11 perhaps identified as useful to
12 developing proposals by the
13 legislature?

14 A. Yeah.

15 Q. And to evaluate the map
16 ultimately enacted by the
17 legislature?

18 A. They would be one -- there
19 would be one measure. I mean a
20 number of people submitted very
21 different policy proposals that they
22 asserted complied with the
23 guidelines. And certainly with the
24 more objective measures such as plus
25 or minus one and that kind of thing.

1 TERRENI

2 They did. I mean but they were very
3 different. I mean so I'm not
4 sure -- yes, the public would look
5 to these guidelines but then express
6 their policy differences through the
7 guidelines. In other words, they
8 might say well, no, I think my map,
9 which is, complies with the
10 guidelines, is a threshold matter is
11 a better policy choice than somebody
12 else's map just as you did versus
13 other maps that were for your
14 organization versus other maps that
15 were submitted.

16 Q. Did you or the Senate
17 present the guidelines to the public
18 as rules for how the maps would be
19 judged?

20 A. I don't recall using that
21 language, no.

22 Q. Let's look at tab 49, which
23 is a document titled South Carolina
24 Senate Redistricting Subcommittee
25 2021 Public Hearings. Tell us about

1 TERRENI

2 our community. It's Bates stamped
3 South Carolina Senate 3745.

4 A. Um-hmm.

5 Q. Have you found that
6 document?

7 A. I have.

8 (Plaintiffs' Exhibit 10, South
9 Carolina Senate Redistricting
10 Subcommittee 2021 Public Hearings,
11 Bates South Carolina Senate 3745,
12 marked for identification, as of
13 this date.)

14 Q. Do you recognize this
15 document?

16 A. Yes.

17 Q. Did you help create it?

18 A. I may have.

19 Q. Can you read into the
20 record the first two sentences under
21 Redistricting Guidelines beginning
22 with "Redistricting guidelines or
23 criteria"?

24 A. Yes. "Redistricting
25 guidelines or criteria are the rules

1 TERRENI

2 of the road for how district lines
3 are redrawn in accordance with
4 state's population. Criteria is
5 intended to make the districts easy
6 to identify and understand and to
7 ensure fairness and consistency."

8 Q. So based upon this document
9 do you have any reason to disagree
10 that this document was publicized by
11 the Senate Judiciary Redistricting
12 Subcommittee during this last round
13 of redistricting?

14 A. No.

15 Q. And is it fair to say that
16 this document that was publicized
17 identified the redistricting
18 guidelines as rules of the road for
19 how lines will be redrawn?

20 A. Yeah. The rules of the
21 road for how lines would be drawn,
22 they are not the exclusive criteria
23 for how lines will be judged and I
24 feel confident everybody understood
25 that because they submitted vastly

1 TERRENI

2 different things using these same
3 rules. I think there's a
4 difference. That's the colloquial
5 language we use and I think it was
6 well understood by everybody.

7 Q. Are you aware that Senator
8 Rankin has been deposed in this
9 case?

10 A. I am.

11 Q. Would it surprise you if he
12 referred to the guidelines as the
13 end all and be all for the Senate's
14 consideration of congressional maps?

15 A. I would have to see his
16 deposition. I don't know how to
17 judge that statement in isolation.

18 Q. Would it surprise you if he
19 said that the Senate would not and
20 could not deviate from these
21 guidelines?

22 A. No.

23 Q. Would you disagree then
24 with Senator Rankin's assessment of
25 the import of these guidelines

1 TERRENI

2 notwithstanding?

3 A. I have no way of saying
4 that. I would need for context.

5 Q. Going back to tab 1 on the
6 Senate guidelines, were you involved
7 in the creation of them?

8 A. Yes.

9 Q. How so?

10 A. I was in -- had some input
11 in the drafting of the document that
12 ultimately was adopted by the Senate
13 subcommittee.

14 Q. Did you or -- did you or
15 are you aware of anyone who shared
16 these draft guidelines with the
17 Jones Day law firm?

18 A. I'm sure I shared them with
19 the Jones Day law firm.

20 Q. Was anyone else outside of
21 the Senate consulted in the
22 development of these guidelines?

23 A. No, ma'am.

24 Q. Outside of Jones Day?

25 A. Not that I know of.

1 TERRENI

2 Q. Who made the decision to
3 hire Jones Day this cycle?

4 A. Senator Rankin.

5 Q. Were you privy to the scope
6 of the retention with Jones Day?

7 A. Probably.

8 Q. Do you know who pays Jones
9 Day?

10 A. The State of South
11 Carolina.

12 Q. Do you know how much they
13 are paid an hour for their
14 representation in this litigation?

15 A. I don't recall.

16 Q. Do you know what the scope
17 -- do you know how much they were
18 paid for their work with
19 congressional redistricting prior to
20 this litigation?

21 A. At one time I did. I do
22 not recall. And I should clarify
23 that I really don't have any direct
24 knowledge of any arrangements that
25 may be specific to the litigation.

1 TERRENI

2 Q. Did you see a retention
3 agreement with Jones Day similar to
4 the retention agreement you had with
5 the Senate at any point in your work
6 on redistricting this cycle?

7 A. I believe I saw the
8 original retention agreement which
9 would not have been similar to mine,
10 at least in form. But I saw a
11 retention agreement.

12 Q. Roman numeral I of these
13 guidelines on this first page is
14 identified as Requirements of
15 Federal Law.

16 A. Yes, ma'am.

17 Q. If you look at under Roman
18 numeral I-A2 Congressional
19 Districts.

20 A. Um-hmm.

21 Q. Is it fair to say that the
22 guidelines urged congressional maps
23 to avoid populational deviations of
24 one person but recognized that a
25 deviation, however small, can be

1 TERRENI

2 just fiduciary, is that your
3 understanding?

4 A. Yes.

5 Q. Under Roman numeral I-B
6 still in the federal law section
7 it's titled Voting Rights. Could
8 you take a moment to read that
9 sentence.

10 A. "A redistricting plan for
11 the general assembly or Congress
12 must not have either the purpose or
13 the effect of diluting minority
14 voting strength and must otherwise
15 comply with Section 2 of the Voting
16 Rights Act, as expressed in
17 Thornburg versus Gingles and its
18 progeny, and the 14th and 15th
19 amendments to the U.S.
20 Constitution."

21 Q. What did understand the
22 diluting a minority voting strength
23 mean?

24 A. Generally speaking it means
25 the diluting of -- the effective

1 TERRENI

2 reduction of a minority community's
3 ability to exercise its electoral
4 franchise either through Section 2
5 by electing a representative of its
6 choice or through the ability to
7 elect or an opportunity to elect a
8 representative of its choice
9 regarding the three Thornburg versus
10 Gingles preconditions are met and,
11 three, the avoidance of intentional
12 or predominantly race based
13 redistricting under the 14th
14 amendment as shown in subsequent
15 case law.

16 Q. In South Carolina would
17 minorities include black voters?

18 A. Yes.

19 Q. Would an example of
20 dilution of racial or ethnic
21 minority voting strength include the
22 cracking of black voters?

23 A. It's a legal term but yes,
24 it could. It could as the term is
25 used in the case law.

1 TERRENI

2 Q. Could it include the
3 packing of black voters?

4 A. It could as the term is
5 used in the case law.

6 Q. Could it include both the
7 packing and cracking of black
8 voters?

9 A. Yes.

10 Q. I believe you mentioned the
11 three Gingles preconditions. Are
12 the three Gingles preconditions that
13 you mentioned what you would
14 consider to be the test for whether
15 there's dilution of minority voting
16 strength?

17 A. It would be one test.

18 Q. What is the other or what
19 is another?

20 A. Well, racial gerrymandering
21 could, I don't suppose it
22 necessarily has to, but could result
23 in the dilution of minority voting
24 strength. It could result in the
25 enhancement of the minority voting

1 TERRENI

2 strength as well, but that would be
3 another way of doing it.

4 Q. I believe you mentioned
5 earlier that racial gerrymandering
6 can be demonstrated through direct
7 evidence of dilution, is that your
8 understanding?

9 A. I may have said that, but I
10 need to -- I mean the central
11 question of racial gerrymandering
12 would be whether race was a
13 predominant factor in the
14 redistricting process and whether or
15 not if it was the predominant factor
16 in redistricting process whether it
17 was the predominant factor in order
18 to serve a compelling state
19 interest.

20 Q. And what do you understand
21 to be compelling state interest?

22 A. Under some circumstances
23 compliance of Section 2 could be a
24 compelling state interest.

25 Compliance of Section 2 does not

1 TERRENI

2 always have to be. I assume you can
3 comply with Section 2 without having
4 to consider race as the predominant
5 factor but it could be.

6 Q. What about remedying
7 historical discrimination, has that
8 been recognized as a compelling
9 state interest?

10 A. It may have been recognized
11 as a compelling state interest but
12 in the current redistricting
13 framework, as I understand it,
14 unless it's expressed through the
15 Voting Rights Act it wouldn't in and
16 of itself be -- I don't know there
17 would be a compelling state interest
18 for using race as the predominant
19 factor in redistricting. I never
20 really had to encounter that.

21 Q. If staff was instructed not
22 to consider race during
23 congressional redistricting, who
24 would have made that decision on
25 behalf of the Senate?

1 TERRENI

2 MR. GORE: Again, I'm just
3 going to object to the extent this
4 calls for attorney-client
5 communications. And the witness
6 can answer to the extent he can do
7 so without divulging confidential
8 or privileged information.

9 A. Well, the question is if
10 staff were considered -- were
11 instructed not to consider race in
12 redistricting who would have
13 instructed staff in that fashion, is
14 that -- did I restate your question
15 fairly?

16 Q. Yes.

17 A. Well, I don't think anybody
18 could have instructed staff in that
19 regard better than the chairman or
20 the subcommittee and the vote if
21 that guidance was given. However,
22 if that guidance were given, it
23 would have been given by counsel,
24 me, Mr. Gore, Mr. Fiffick.

25 Q. Are you aware whether

1 TERRENI

2 Chairman Rankin instructed Senate
3 staff not to consider race during
4 congressional redistricting?

5 A. I don't recall him doing
6 that.

7 Q. Is that something you would
8 recall?

9 A. Probably.

10 Q. Because it's important
11 whether or not the Senate could
12 consider race or not in drawing
13 redistricting lines?

14 A. No. It's just because it
15 would have been a specific
16 instruction from Senator Rankin. I
17 mean when you say considering race,
18 if you are asking did Senate staff
19 look at the racial impact of various
20 draws or the racial composition in
21 districts under various draws, the
22 answer is yes. Was it the
23 predominant factor in guiding
24 redistrict -- proposed redistricting
25 plans, no, and was it a predominant

1 TERRENI

2 factor for the subcommittee, I don't
3 believe it was.

4 Q. Who would have made the
5 determination of whether or not race
6 was the predominant factor in
7 redrawing the congressional map?

8 A. The courts.

9 Q. So that decision, that
10 analysis of whether race was the
11 predominant factor in the redrawing
12 of South Carolina's congressional
13 map, that has not been determined
14 yet because litigation is ongoing?

15 A. I mean that's the way I see
16 it. If you are asking whether or
17 not we consider race as the
18 predominant factor, the answer is
19 no.

20 Q. Because that's a factual
21 question because there hasn't been a
22 legal determination yet?

23 A. Well, I suppose so. I mean
24 obviously we don't think it was.
25 You seem to think that it was the

1 TERRENI

2 predominant factor and the courts
3 are going to have decide.

4 Q. If an individual member
5 said during the redistricting
6 process that they did not consider
7 race, is it your position that they
8 were not instructed to do so by
9 Senator Rankin as far as you are
10 aware?

11 A. I'm not aware of Senator
12 Rankin instructing individual
13 members to do things one way or
14 another.

15 Q. Do you see anything, and
16 you can take a moment looking at
17 this guidance, do you see anything
18 in the guidance saying that race
19 would not be considered in the
20 development of redistricting lines
21 for maps in South Carolina during
22 this cycle?

23 A. I don't think so. And it
24 says race must not be the
25 predominant factor. Yeah. I mean

1 TERRENI

2 I'm not aware of any instruction in
3 the guidelines that says don't
4 consider race. Now, whatever
5 individual members wanted to do
6 could be that individual members
7 said I'm just not going to look at
8 race at all. I mean I think that
9 would be a permissible policy
10 decision on their part. I had no
11 control over that.

12 Q. I want to understand a
13 little bit more what you believe to
14 be the consideration of race and I
15 believe you recently testified a few
16 moments ago that it's looking at the
17 racial impact of lines on a
18 particular protected community, is
19 that fair to say?

20 A. Yeah, by impact I mean you
21 change the composition of the
22 district is the starting point.

23 Q. Is the --

24 A. Is a starting point.

25 Q. What else does

1 TERRENI

2 consideration of race mean to you in
3 redrawing lines?

4 A. As a practical matter we
5 consider race in that we look at the
6 racial impact of different
7 permutations or different plans when
8 we draw; in other words, it's a
9 question. It is also a question,
10 no. I said it could be a question.
11 What is the BVAP. Why is that?
12 Because for one thing if it involves
13 a minority-majority district people
14 are going to raise questions about
15 that. Did you pack it, did you
16 crack it. Same questions you are
17 raising now. So for us to just put
18 blinders on and say I don't want to
19 look at BVAP, I don't think is
20 practical in redistricting in South
21 Carolina. Does it mean that
22 everything is guided by BVAP? No.
23 It just means that, hey, if there's
24 going to be a substantial change in
25 this district, if there's going to

1 TERRENI

2 be a substantial change in the BVAP
3 of the district, there's substantial
4 inquiries in the BVAP for the
5 district that may raise some
6 questions that we have to explore,
7 either legal questions or practical
8 questions. I may need to call
9 Mr. Gore UP and say hey, would this
10 district caused some legal concerns
11 from the racial gerrymandering
12 standpoint where because it's
13 resulting in a different BVAP
14 impact. It's just one of those
15 things like county boundaries,
16 precinct boundaries, whatever you
17 should reconsider.

18 Q. Could keeping BVAP as at
19 the relative same levels as the 2011
20 benchmark map also have a racial
21 impact?

22 A. Could keeping BVAP -- I
23 mean it's going to be what it is,
24 right? I mean you either drop it,
25 raise it or keep it the same. It's

1 TERRENI

2 all an impact, right?

3 Q. So keeping BVAP at a
4 similar level as the 2011 map could
5 that be under certain actual
6 scenarios dilution of minority
7 voting strength?

8 A. Oh, I'm sorry. I didn't --

9 Q. I didn't say it great
10 before so it wasn't -- I said it
11 better I think the second time.

12 A. Could it be dilution to
13 keep it in the benchmark plan under
14 the 2011 -- I mean under 2020 census
15 numbers. In other words, you have a
16 benchmark plan that was X in
17 District 6, it's now Y in
18 District 6, could that be dilution
19 if you leave it at Y and you don't
20 make some corresponding change.
21 Could be.

22 Q. I think earlier you
23 testified that at some point you
24 readily Arlington Heights case but
25 you are not super familiar with it,

1 TERRENI

2 is that fair?

3 A. That's fair.

4 Q. So do you know under
5 Section 2 -- well, let me step back.
6 I think I understood you to have
7 said earlier that you understand
8 Section 2 to have a effects element
9 and/or a purpose element, you can
10 show a violation of Section 2 by
11 discriminatory results and/or by
12 discriminatory purposes. Is that
13 what you understand to be the case?

14 A. Yes, in the sense that I
15 believe at one time purpose was
16 required. While it was amended
17 Congress said no, you no longer had
18 to show explicit purpose, you could
19 show it through a fact.

20 Could you show a violation of
21 Section 2 by purpose alone? I
22 believe so. As a practical matter I
23 don't know that I have ever seen
24 that done.

25 Q. And therefore are you aware

1 TERRENI

2 of what the test would be for
3 proving purposeful discrimination
4 under Section 2?

5 A. I imagine it would be an
6 evidentiary test.

7 Q. Who was responsible to the
8 extent that compliance with the
9 Voting Rights Act was a criteria
10 that was evaluated in consideration
11 of Senate maps, proposed maps or
12 even public maps, who was
13 responsible for making the
14 determination that a map complied
15 with the Voting Rights Act?

16 A. Primarily the legal
17 question of voting rights compliance
18 and likely or unlikely liability
19 under the Voting Rights Act would
20 have been something we consulted
21 with Mr. Gore on.

22 So in other words, if we have
23 a map that we were interested in and
24 we had some questions about it we
25 would go to Mr. Gore and say,

1 TERRENI

2 Mr. Gore, you know, or John, you
3 know, tell us about the legal
4 upsides and downsides and possible
5 challenges and defenses on this map.
6 We relied on him for, fundamentally
7 for that counseling.

8 I have a working knowledge of
9 this stuff, but I was brought in
10 largely in the process to structure
11 it. Andy had never done it before.
12 I have been around for the past two
13 redistricting cycles. So a lot of
14 the practical stuff, like hiring
15 demographers, how many printers you
16 need and just the working day-to-day
17 knowledge of voting rights, that's
18 what I did. Serious questions about
19 compliance we turned to Jones Day.

20 Q. Based upon your earlier
21 testimony, well, based upon what I'm
22 understanding from you, you
23 mentioned Section 2 compliance as a
24 defense to a claim of racial
25 gerrymandering, is that fair to say?

1 TERRENI

2 A. It could be.

3 Q. And based upon what I'm
4 hearing from you is it fair to say
5 that until there is a claim of
6 racial gerrymandering it is not your
7 understanding that you have to look
8 at compliance with Section 2 until
9 that claim has been raised, is that
10 fair?

11 A. No. Let --

12 Q. Let me ask --

13 A. -- until -- I'm sorry, go
14 ahead.

15 Q. No, you can go.

16 A. In the first place, I
17 believe your question was claim of
18 racial gerrymandering when looking
19 at Section 2 compliance?

20 Q. Well, I think you testified
21 earlier that a defense to racial
22 gerrymandering could be compliance
23 with Section 2. And then we have
24 the discussion about whether
25 remedying historical discrimination

1 TERRENI

2 could also be a defense to racial
3 gerrymandering. But we've
4 established Section 2.

5 A. I said that compliance with
6 Section 2 could be a defense to
7 racial gerrymandering in the context
8 of -- compliance with Section 2
9 could be a defense for a racial
10 gerrymandering claim if there's no
11 other way it complied with Section
12 2. That's my understanding of the
13 law.

14 Q. Let me ask you this.
15 During your consideration, during
16 your experience with congressional
17 redistricting, did you hear the
18 public or any member of the
19 legislature challenge any plan as a
20 racial gerrymander, any of proposed
21 plans by the Senate or any plan even
22 proposed by the public, did you hear
23 claims of racial gerrymandering
24 during the process?

25 A. Yes.

1 TERRENI

2 Q. How then did you consider
3 whether race was the predominant
4 factor or not, and if so, whether
5 there was a compelling state
6 interest during the legislative
7 process, how did you go about doing
8 that?

9 MR. GORE: Again, I'm going to
10 just restate my objection on
11 attorney-client privilege and work
12 product grounds. The witness can
13 answer to the extent he can do so
14 without divulging privileged
15 information.

16 A. Generally speaking, you
17 asked about every plan or most --
18 any number of plans that might have
19 been submitted and there would have
20 been a criticism of racial
21 gerrymandering, which I'm sure you
22 can appreciate is not an infrequent
23 accusation in this process. So
24 spending on the plan there may have
25 been different ways to evaluate it.

1 TERRENI

2 First of all, I mean you could
3 look at it and -- well, let's be --
4 let's -- I'm trying to
5 distinguish --

6 Q. Let's focus on a plan by
7 the legislature proposed by the
8 Senate that was accused of racial
9 gerrymandering.

10 A. That makes it a little
11 easier. Well, in that case first
12 you ask yourself factually were the
13 map drawers, were the members
14 engaged in race-based gerrymandering
15 or do you know personally or from
16 the record that there were other
17 considerations that were expressed
18 and were substantiated why these
19 changes were made. So if you -- if
20 the answer is yeah, I know why that
21 was done and I know from the record
22 it was explained in the record in
23 incredible fashion that that wasn't
24 a race based gerrymandering, that
25 was -- those changes were made for

1 TERRENI

2 race neutral reasons or even for
3 reasons that were not predominantly
4 racial then you don't get there.

5 You only get to this
6 compelling state interest thing if
7 somebody says no, it was -- no, I'm
8 sorry, we just had to do it, we had
9 to take race into account and we had
10 to do it in such fashion in order to
11 comply with Section 2.

12 I'm not aware that we ever got
13 to that on any claim we had,
14 Ms. Aden. I don't recall making
15 that determination. There's no
16 opposition that any Senate plan that
17 was advanced was a racial
18 gerrymandering that was necessary
19 for Section 2 compliance. To the
20 opposite.

21 Q. Was that -- those were
22 based upon this evaluation of
23 whether race was considered, whether
24 race was predominated over
25 traditional redistricting

1 TERRENI

2 principles. Are you aware whether
3 those discussions about what was
4 done, how it was done, were those
5 reduced to writing or were those by
6 verbal explanations, whether on the
7 floor or in informal proceedings?

8 A. It would depend on the
9 plan, but if we are talking about
10 the plans that were advanced by the
11 subcommittee and the Senate, they
12 were generally explanations to be
13 given verbally either by Mr. Roberts
14 or individual members in the course
15 of the debate.

16 Q. And if a plan had been
17 accused of, a legislative plan had
18 been accused or was accused of being
19 a racial gerrymander during the
20 legislative process, there was no
21 systematic analysis, written
22 analysis that would have been done
23 to justify what was and was not
24 considered with respect to that
25 plan?

1 TERRENI

2 MR. GORE: Again, I'm just
3 going to renew the objection to the
4 extent it calls for privileged
5 communications, attorney-client
6 communications or work product.
7 The witness can answer to the
8 extent he can do so without
9 divulging any such communications.

10 A. Without divulging those
11 communications there wouldn't
12 automatically have been such an
13 analysis done. I'm not saying it
14 would have been done on different
15 occasions or different forms. I
16 mean I -- if you are asking me by --
17 if there were explanations given to
18 legislators for how a plan was drawn
19 or what -- or what the features of a
20 plan were and those explanations
21 offered race mutual explanations or
22 explanations in which didn't
23 predominate but provided fact sheets
24 and that kind of thing to
25 legislators, I certainly am.

1 TERRENI

2 Q. I'll move on. Under Roman
3 numeral I-C on this guidelines, the
4 next category under Requirements of
5 Federal Law is to avoid racial
6 gerrymandering which we have been
7 discussing?

8 A. Yes, ma'am.

9 Q. Would you agree that
10 looking at racial demographics
11 during development of plans is not
12 per se racial predominance?

13 A. Yes.

14 Q. Would you agree that
15 considering racial bloc voting, any
16 racial bloc voting patterns is not
17 per se racial predominance?

18 A. Yes, not per se.

19 Q. Would you agree that
20 considering where communities live
21 and whether they live in segregated
22 communities or not is not per se
23 racial predominance?

24 A. Yes.

25 Q. So would you agree that

1 TERRENI

2 under these guidelines and under any
3 of your other sources of information
4 that all of those things could have
5 been considered without necessarily
6 racially gerrymandering?

7 A. Yes.

8 Q. Looking at Roman numeral
9 II, Constant Dispute. Do you
10 understand that to be a federal law
11 requirement or not?

12 A. Honestly, I never have
13 given it much thought. It's a
14 practical requirement. I don't
15 know.

16 Q. But under -- as it looks
17 like in this guideline under Roman
18 numeral I, Requirements of Federal
19 Law, the major subheadings are
20 Population Equality, Voting Rights
21 and Avoidance of Racial
22 Gerrymandering, those are
23 requirements under I-A?

24 A. Yes, ma'am.

25 Q. And contiguity is under

1 TERRENI

2 Roman numeral II and it does not say
3 one way or the other whether it's
4 federal or state law nor a
5 requirement, is that fair to say?

6 A. Yeah. Yeah, that's fair.

7 Q. Looking at page 2 South
8 Carolina Senate 22358 there is a
9 Section 3, Additional
10 Considerations. And it reads:
11 "Other criteria that should be given
12 consideration, where practical and
13 appropriate, in no particular order
14 of preference."

15 Did I read that accurately?

16 A. You did.

17 Q. And you see that section?

18 A. I do.

19 Q. Do you understand that
20 these subcategories underneath
21 additional considerations are of
22 lower priority than what precedes
23 them under federal law, even
24 contiguity?

25 A. That's one way of saying

1 TERRENI

2 it. Another way of saying it would
3 be that the federal, complies with
4 federal law and contiguity for that
5 matter are just kind of baseline
6 requirements and maybe the
7 background to redistricting. You
8 know, almost the canvas on which you
9 would use the additional
10 considerations to draft your plan.

11 So are they inferior, yeah, in
12 that sense I guess they are. But I
13 think they really co-exist.

14 Q. But according to the
15 language in this document it said
16 they should be given consideration,
17 it doesn't say they must be given
18 consideration, is that accurate?

19 A. Yes.

20 Q. And it lists the things
21 that follow underneath them as
22 saying that they can be considered
23 where practical and where
24 appropriate and in no particular
25 order or preference?

1 TERRENI

2 A. Correct.

3 Q. And we agreed earlier this
4 document was not modified or amended
5 but it was adopted on September 17th
6 by the subcommittee?

7 A. That's what I remember.

8 Q. And Roman numeral A under
9 these additional considerations is
10 communities of interest, is that
11 accurate?

12 A. It is.

13 Q. Okay. And you explained
14 earlier what you understood
15 communities of interest to be?

16 A. Um-hmm.

17 Q. Is there anything about how
18 it's described here that makes you
19 change how you view communities of
20 interest one way or the other?

21 A. I think this is probably a
22 better description than I gave you
23 off the top of my head. But I don't
24 think what I said was inconsistent
25 with this.

1 TERRENI

2 Q. I want to just take a
3 moment to talk a little bit about
4 public hearings that were held by
5 the Senate in 2021. Are you aware
6 that the Senate held public hearings
7 around the state from approximately
8 late July through early,
9 mid-August 2021?

10 A. Yes, ma'am.

11 Q. And do you recall how many
12 hearings there were?

13 A. Not off the top of my head.

14 Q. If I said around ten, does
15 that seem fair?

16 A. It does.

17 Q. Were you involved in the
18 decision to hold these hearings?

19 A. The decision was the
20 subcommittee's, but I certainly
21 outlined that as part of the process
22 for the Senate and to Senator
23 Rankin.

24 Q. Do you know if decisions
25 about the public process, whether or

1 TERRENI

2 not Jones Day was also consulted
3 about the public hearings?

4 A. I'm sure they were.

5 Q. Did you create any public
6 education materials about
7 redistricting for these public
8 hearings?

9 A. Did I personally? I don't
10 think so. But I do remember there
11 was I think what you showed me
12 earlier was one of the handouts that
13 we used.

14 Q. Which you said you believe
15 you have reviewed?

16 A. I believe I would have
17 reviewed it, yes.

18 Q. If there was information
19 disseminated about public hearings,
20 would you likely have reviewed it
21 or?

22 A. Yes.

23 Q. Did you personally attend
24 those public hearings?

25 A. Most of them at least. I'm

1 TERRENI

2 not sure I went to all of them but I
3 went to most of them.

4 Q. And are you aware that
5 those public hearings were videoed
6 and there was a written
7 transcription of the hearings?

8 A. I'm generally aware of
9 written transcription, I'm not sure
10 when it was created. I don't recall
11 that. I know they were videoed so
12 they could be accessed in that way
13 and in person to the website. So
14 then people had access to what was
15 said.

16 Q. And if you didn't go to a
17 hearing, did you subsequently look
18 at a written transcription or video
19 if it was available for a particular
20 hearing?

21 A. Yeah, I would have
22 familiarized myself with the
23 testimony one way or another, either
24 by watching the video, reading the
25 transcript or speaking to somebody

1 TERRENI

2 who was already reading the summary.

3 There was some times stories that
4 were created. I'm struggling to
5 remember. I think I attended all of
6 them but I don't -- I can't be a
7 hundred percent sure.

8 Q. Do you recall taking any
9 notes during those hearings?

10 A. I probably did.

11 Q. Do you recall taking
12 handwritten notes during those
13 hearings?

14 A. Yes.

15 Q. Do you recall whether or
16 not you turned those over in the
17 process of discovery in this case?

18 A. I may have turned them over
19 in the process of discovery. But
20 I'll just go ahead and point out
21 your subpoena didn't ask for my
22 notes.

23 Q. Do you consider the work
24 product that you generated during
25 the redistricting process to be the

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2 work product of the Senate?

3 A. Yes. In accordance with
4 the terms of my retainer agreement
5 which has Senator Rankin as the
6 representative of the Senate to whom
7 I answer.

8 Q. So is that a yes or no?

9 A. It's a yes. I said yes.

10 Q. I didn't hear you, I'm
11 sorry. So any handwritten notes of
12 the public hearings would be --
13 could be --

14 A. Oh, I'm sorry, you said
15 work product of the Senate. It's my
16 work product on behalf of the
17 Senate. I failed to make the
18 distinction. By Senate staff, no.

19 Q. But do you consider the
20 work product that you generated to
21 be the work product of the Senate
22 since you were hired by the Senate
23 to advise and consult for them?

24 A. It's my work -- my
25 understanding of work product

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2 protection the way I have treated it
3 in the practice of law is my work
4 product is my work product and is
5 protected from discovery as an
6 attorney acting on behalf of a
7 client.

8 My work product -- if a client
9 were to ask me for a file, I don't
10 think I'm generally obligated to
11 turn over my work product or my
12 notes, although I've never had to do
13 that is that in my communications
14 with the client are attorney-client
15 privilege. If you are asking me
16 whether my -- I considered my notes
17 to be the equivalent of a Senate
18 staffer's notes, the answer is no.

19 Q. Are you aware of whether or
20 not there is a common interest
21 agreement -- there was a common
22 interest agreement between the work
23 that the Senate was doing in
24 developing congressional maps and
25 that of the House?

1 TERRENI

2 A. No.

3 Q. Do you know whether in the
4 context of this litigation there's a
5 common interest agreement between
6 the defendants for the Senate and
7 the defendants for the House?

8 A. I believe there is.

9 Q. There is or is not?

10 A. I said I believe there is.
11 I don't think I have seen any, but I
12 believe I have heard of it.

13 Q. Did any feedback from these
14 hearings impact your assessment of
15 the maps that the legislature
16 developed or that the public
17 submitted?

18 A. In what way?

19 Q. Did you from having
20 participated in public hearings by
21 going to them or reviewing them, if
22 you did not, did anything that you
23 learned from them impact how you
24 developed and considered and
25 critiqued maps?

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2 A. Yes.

3 Q. How so?

4 A. Well, we would have
5 considered maps at times and in some
6 cases as to whether, or most of
7 entitlement, whether testimony
8 supported or opposed them. But I
9 mean testimony was not the sole
10 source of that, of why a map might
11 have been drawn but it was taken
12 into account.

13 Q. Do you mind looking at tab
14 45?

15 A. Yes, ma'am.

16 Q. Which is the subpoena, the
17 final subpoena --

18 A. Yes, ma'am.

19 Q. -- for this deposition.

20 A. Yes, ma'am.

21 Q. That would be now
22 Plaintiffs' Exhibit 11.

23 A. Yes, ma'am.

24 (Plaintiffs' Exhibit 11,
25 Subpoena, marked for

1 TERRENI

2 identification, as of this date.)

3 Q. Could you go under the
4 definition of communications and
5 read that to yourself, please.

6 A. Yes, ma'am.

7 "Communications means the
8 transmittal of information of any
9 kind, written or oral, by and
10 through any means, including but not
11 limited to emails, email
12 attachments, calendar invitations,
13 PowerPoint presentations, pdfs,
14 written reports, letters and the
15 like. It includes communications
16 from the National Republican
17 Redistricting Trust that include or
18 are with outside entity and
19 individuals."

20 Q. And if you can go to the
21 next page and look at paragraph 9,
22 document or documents. You do not
23 need to read that into the record
24 but take a moment to skim that,
25 please.

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2 A. Yes.

3 Q. So looking at the
4 definition of communications and
5 documents, and you can even go down
6 to the documents requested on pages
7 11 through 13, I just want to
8 understand whether it's your
9 position that written notes that you
10 made during consideration of
11 congressional maps that that -- you
12 do not believe that they fall within
13 the scope of the subpoena that we
14 served upon you.

15 A. Well, let's go through
16 this, and I will say that I read the
17 subpoena, I consulted with my
18 counsel and we both agreed that
19 those documents had not been
20 requested. So I am going to go look
21 at it again.

22 Q. Let's look at request for
23 production No. 1, for example.

24 A. Yes, ma'am.

25 Q. Without reading it entirely

1 TERRENI

2 into the record would you agree that
3 it in general asks for documents
4 that reflect or discuss the
5 rationale, the purpose, the
6 interpretation, the analysis of the
7 enacted map and predecessor maps?

8 A. Under certain circumstances
9 -- I mean what it asks for is all
10 documents by the defendant committee
11 members or the South Carolina
12 General Assembly or communications
13 between defendant committee members
14 of South Carolina General Assembly
15 and so forth. I took notes. I
16 didn't communicate with anybody.

17 Q. Can you go up to the
18 definition of you on paragraph 18 on
19 page 6?

20 A. Certainly.

21 Q. It says: "You or your
22 means Charles L.A. Terreni and all
23 current or former agents, advisors,
24 employees, representatives, officers
25 consultant, clerks or contractors

1 TERRENI

2 with Terreni Law Firm and any person
3 or entity acting or purporting to
4 act on your behalf or subject to
5 your control."

6 A. I'm sorry, I'm looking.
7 Yeah.

8 Q. And so it's your position
9 that the notes that you took during
10 the public hearings that I believe
11 you just testified impacted your
12 consideration of congressional
13 maps --

14 A. I didn't say that at all.
15 I said -- you asked me if I took
16 notes during the public hearings. I
17 said I did. You asked me if we had
18 considered the testimony in public
19 hearings in the process of
20 redistricting and I said I did. You
21 didn't ask me, and I wouldn't deny
22 if I did, let's just be clear, did
23 you consult your notes. I may have.
24 I probably consulted the transcript.
25 It was much easier. I took notes

1 TERRENI

2 just because I was taking notes.
3 You know, but anyway it's possible I
4 consulted my notes.

5 Please, go ahead.

6 Q. And the notes that you
7 consulted, either the handwritten
8 notes or the transcripts, impacted
9 your review, your consideration of
10 congressional maps this cycle, yes
11 or no?

12 A. They could have.

13 Q. Are you saying that they
14 didn't?

15 A. I'm not saying they didn't
16 or they did. It would depend on the
17 notes. It would depend on -- I mean
18 I -- that's a very general question.

19 Q. But there were ten
20 hearings, correct?

21 A. Yes, there were ten
22 hearings.

23 Q. And would you agree that
24 there were thousands of pages of
25 transcripts of those hearings or

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2 more than a thousand?

3 A. I don't know.

4 Q. Do you think that any
5 aspect of your handwritten notes
6 factored into your consideration of
7 congressional maps this cycle?

8 A. It could have.

9 Q. Have you gone back to look
10 at those notes to make an assessment
11 of whether anything in them impacted
12 your assessment for consideration of
13 congressional maps?

14 A. Not specifically.

15 Q. But you could do that?

16 A. I suppose.

17 Q. And that would be relevant
18 under the scope of the subpoena to
19 what went into the consideration of
20 congressional maps this cycle?

21 A. No.

22 Q. Why not?

23 A. You asked for what you
24 asked for in the subpoena. Mr. Gore
25 determined that you didn't ask for

1 TERRENI

2 the notes. We complied with the
3 terms of the subpoena. If you are
4 implying something else, that's
5 different. If you are asking
6 whether the notes are discoverable,
7 I'm going to let you battle that out
8 with Mr. Gore. But I deny any
9 implication that I have somehow not
10 complied with the terms of your
11 subpoena. You asked for
12 communications I gave them to you.

13 Q. Did you share those notes
14 with Senator Rankin as someone who
15 you report to?

16 A. No.

17 Q. And did you share them with
18 any Senate staff?

19 A. No.

20 Q. I want to turn your
21 attention to tab 28, which should
22 now be marked as Plaintiffs' Exhibit
23 12.

24 (Plaintiffs' Exhibit 12, Email
25 from Paula Benson to Charles

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2 Terreni with attachment, Bates
3 South Carolina Senate 22619 to
4 22621, marked for identification,
5 as of this date.)

6 Q. And this is an email cover
7 from Paula Benson to you and others
8 dated November 2, 2021, with an
9 attachment identified as testimony
10 concerning communities of interest.
11 It's Bates stamped South Carolina
12 Senate 22619 to 22621.

13 Do you have that?

14 A. I think so, yes.

15 Q. Are you familiar with this
16 document?

17 A. At this time I don't
18 remember if I saw this or not. I
19 just don't remember it.

20 Q. But you are copied on this
21 document or you sent this document?

22 A. I appear to be, yes.

23 Q. And Paula Benson is someone
24 that you said you frequently
25 communicated with during the

1 TERRENI

2 congressional redistricting process?

3 A. Yes, ma'am.

4 Q. Does the first page reflect
5 that Ms. Benson had her law clerk
6 compile a chart showing the
7 testimony that the Senate received
8 at public hearings about communities
9 of interest?

10 A. It does.

11 Q. And is it fair to say that
12 the attached document is a two-page
13 chart?

14 A. It is.

15 Q. And is it fair to say that
16 for some entries like for Sumter a
17 July 28th hearing that there is one
18 row entry on that chart summarizing
19 testimony?

20 A. It is what it is, yes.

21 Q. Are you aware of any other
22 charts like this summarizing
23 communities of interest testimony
24 produced by the Senate?

25 A. Off the top of my head I

1 TERRENI

2 mean Goodman, but I don't remember
3 at this time.

4 Q. Do you know whether this
5 summary was provided to Senate
6 members?

7 A. No.

8 Q. Okay. Going back to tab 1,
9 which is the guidelines.

10 A. Okay.

11 Q. Underneath Communities of
12 Interest under 3B on the second page
13 South Carolina Senate 22358 there is
14 a category called Constituent
15 Consistency.

16 Do you see that?

17 A. Yes, ma'am.

18 Q. And it says that:

19 "Preserving the cores of existing
20 districts, keeping incumbent
21 residences and districts with their
22 core constituents and avoiding
23 contests between incumbent
24 legislators should be considered."

25 Is that accurate?

1 TERRENI

2 A. Yes, ma'am.

3 Q. And based upon where this
4 falls in the guidelines would you
5 agree that this is a subsidiary
6 consideration to federal law
7 requirements?

8 A. Yeah. And if you are
9 asking me could you violate federal
10 law for the sake of constituent
11 consistency, my answer would be no.

12 Q. And by federal law we are
13 talking about compliance with one
14 person, one vote Section 2 and
15 nonracial gerrymandering?

16 A. Yes, ma'am.

17 Q. Did you have any concerns
18 that preserving the cores of
19 existing districts could bake in
20 lines that are harmful to compliance
21 with federal law?

22 A. To the extent that I did, I
23 would have discussed them with
24 Mr. Gore. In the final analysis my
25 answer would be no.

1 TERRENI

2 Q. Do you know if core
3 constituency is a per se defense to
4 the sorting of voters within,
5 without or keeping them in
6 districts?

7 MR. GORE: Object to form.

8 A. Could you repeat that
9 question?

10 Q. Do you know whether core
11 constituency respecting cores of
12 districts is a per se defense to the
13 improper sorting of voters between
14 districts?

15 A. Improper sorting of voters
16 according to race is what you mean?

17 Q. And are legally improper.

18 A. Of any kind?

19 Q. Of any kind.

20 A. I don't think it is.

21 Q. And do you think it is a
22 per se defense to the legal sorting
23 of voters on the basis of race?

24 A. No.

25 Q. In fact, are you aware of

1 TERRENI

2 any case law that shows that core
3 constituency can be unjustified if
4 it harms racial minorities?

5 A. I'm not sure what you mean
6 by the term "harms racial minority,"
7 but I'm not aware of any case law
8 that says core constituencies can
9 justify the violation of federal
10 law, if that's what you are asking
11 me.

12 Q. Looking at subcategories C,
13 D and E, which are minimizing
14 divisions of county boundaries,
15 minimizing divisions of cities and
16 towns, and minimizing divisions of
17 voting precinct boundaries.

18 A. Yes.

19 Q. Do you think this category
20 overlaps with the communities of
21 interest category or do you see them
22 as distinct considerations?

23 A. They could overlap but not
24 necessarily.

25 Q. How is responsible -- well,

1 TERRENI

2 let me strike that.

3 Under the last category
4 District Compactness, what does
5 district compactness mean to you?

6 A. What courts have said in
7 South Carolina decisions, especially
8 Colleton County, it means the
9 compactness is somebody's view on a
10 subjective and individual basis.
11 That no mechanical measure of
12 compactness is necessarily used.
13 It's really a visual thing.

14 Q. Does compactness relate to
15 the shape of a district?

16 A. It could.

17 Q. And can it relate to the
18 distribution of communities within a
19 district?

20 A. Please explain what you
21 mean.

22 Q. So for example, could you
23 look to the way that communities are
24 sorted within a district whether and
25 how communities of interest are

1 TERRENI

2 expected to determine whether or not
3 a district is compact?

4 A. I think compactness
5 generally is a geographical question
6 not a cultural question. So I think
7 that's where you would end up being
8 more in a community of interest
9 situation than a compactness
10 situation.

11 There are times when one of
12 these factors may override the
13 other. That's what the guidelines
14 are intended do.

15 Q. If you look at the language
16 in the guidelines it says: "In
17 determining the relative compactness
18 of a district consideration should
19 be given to geography, demography,
20 communities of interest and the
21 extent to which parts of the
22 district are joined by roads, media
23 outlets or other areas or other
24 means for constituents to
25 communicate effectively with each

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2 other and with their
3 representatives?

4 A. Court act. Which means
5 that, at least, the compactness of a
6 district might mean the extent to
7 which different communities or
8 components of a district are able to
9 communicate with one another or
10 joined by [inaudible] outlets.

11 What I'm saying is I don't
12 think compactness and communities of
13 interest are the same thing. I
14 think they are different. Now, it
15 could -- the inclusion of the impact
16 of both communities of interest in a
17 district relate to its compactness I
18 suppose yes. But I view at least
19 compactness as primarily a visual
20 and geographical feature which may
21 involve these factors that are
22 talked about in there.

23 Q. Are you familiar with the
24 LULAC versus Perry case that the
25 Supreme Court decided?

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2 A. I read it a long time ago.

3 But I remember some of it.

4 Q. And you would accept the
5 Supreme Court's definition of
6 compactness as defined in that case?

7 A. I don't recall the
8 definition.

9 Q. In the final category Roman
10 numeral IV it states that: "Other
11 succinct and importable sources of
12 demographic and political
13 information may be considered in
14 drafting and analyzing proposed
15 redistricting plans."

16 Did I read that correct?

17 A. You did.

18 Q. What did you understand
19 demographic and political
20 information to mean here?

21 A. Well, political results to
22 the extent where we had other
23 political subdivision boundaries
24 such as school district boundaries
25 or things to that effect might be a

1 TERRENI

2 variable or spoken about by members.
3 They could be considered any
4 information, institutional quarters
5 information, do you have presence,
6 do you have diversity, that kind of
7 thing.

8 Q. And demographic data, what
9 does that include?

10 A. It says it may be
11 considered, the demographic data we
12 consider is the demographic data
13 which you've seen. I'm not aware if
14 any other -- if we had had other
15 reliable sources of demographic data
16 we might have included in there if
17 we did that I recall.

18 Q. And in terms of the
19 political data I know you mentioned
20 the work that Clark Bensen did on
21 election results. Did you get
22 political data from any other
23 sources this cycle that you
24 considered for congressional map
25 making?

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2 A. In congressional map
3 making, and I'm just -- I want to be
4 careful to be complete here, I know
5 that we had access to some voter
6 registration data and I also know
7 that we -- quickly that we had some
8 point determined wasn't really
9 probative or reliable.

10 And -- so I don't believe we
11 considered it in the congressional
12 process. There was no other
13 political data other than what you
14 see on the website.

15 Q. And do you know what the
16 source of this unreliable data was
17 that you did not consider?

18 A. Would have been the State
19 Election Commission.

20 Q. Mr. Terreni, are you
21 familiar with statements that racial
22 identity and political affiliation
23 are correlated in South Carolina?

24 A. I have heard that said
25 before.

1 TERRENI

2 Q. What do you understand that
3 to mean?

4 A. That minorities,
5 specifically African-Americans,
6 overwhelmingly vote for the
7 Democratic party and that white
8 voters not as overwhelmingly but in
9 equal -- not equal, excuse me, but
10 white voters predominantly vote for
11 Republicans.

12 Q. Are you aware of any cases
13 decided by South Carolina courts,
14 federal or state, or the Fourth
15 Circuit or Supreme Court that have
16 found racially polarized voting in
17 South Carolina?

18 A. Colleton County versus
19 McConnell found racially polarized
20 voting in South Carolina in 2000 or
21 2001 and '2. I don't know that it
22 was -- and other than that, I'm not
23 saying there was, but I'm not
24 remembering.

25 Q. Are you familiar with the

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2 litigation involving Charleston
3 school districts?

4 A. Generally.

5 Q. And are you aware whether
6 racially polarized voting has been
7 found in Charleston?

8 A. I'm sorry, Charleston
9 school districts?

10 Q. Or County Commission?

11 A. That's two different
12 things.

13 Q. It is. It's two different
14 things. There's a county level
15 Section 2 lawsuit?

16 A. Presently or --

17 Q. No. There's a --

18 A. I remember a section, I
19 guess it was a Section 2 lawsuit but
20 I don't remember a lawsuit
21 challenging Charleston's method of
22 electing county council members
23 which was a voting district
24 decision. And it would not surprise
25 me that polarized voting was found

1 TERRENI

2 in that lawsuit, but I don't
3 specifically recall, but it wouldn't
4 surprise me.

5 Q. Did you consider or are you
6 aware of anyone in the Senate who
7 considered any sources of data on
8 voting behavior as congressional
9 maps were developed?

10 A. I'm sorry, I'm having
11 trouble with that question. Could
12 you restate it for me? Maybe if I
13 hear it again.

14 Q. Let me strike that. I'm
15 going to move on to something else.

16 You cited the Colleton County
17 case. Do you dispute or have a
18 basis to dispute that there is --
19 that there continues to be racially
20 polarized voting in South Carolina?

21 A. I don't know one way or the
22 other honestly. I mean I have heard
23 people say it, express their views
24 on that both ways.

25 Q. But you are not aware of

1 TERRENI

2 whether a racially polarized voting
3 analysis was conducted or are you
4 aware whether racially polarized
5 voting analysis was conducted by the
6 Senate as maps were being developed
7 for Congress?

8 A. I am not aware that a
9 racially polarized voting analysis
10 was conducted by the Senate as maps
11 were being developed for Congress.
12 I have no knowledge of such a thing
13 and I don't believe it occurred.

14 Q. Are you aware whether the
15 public or legislative members asked
16 for racially polarized voting
17 analysis to be conducted while
18 congressional maps were being
19 considered?

20 A. I'm aware that some members
21 of the public and one member of the
22 general assembly, at least, Senator
23 Harpootlian, asked or suggested that
24 it should be done.

25 Q. And do you know whether

1 TERRENI

2 that was acted upon?

3 A. Yeah. I know it wasn't.

4 Q. Who made the decision not
5 to act upon those requests?

6 A. The subcommittee.

7 Q. Did they take a vote on
8 that?

9 A. I think they have. It was
10 during the, or at least they
11 declined to take a vote on it, but
12 the discussion we had in a public
13 subcommittee meeting in which
14 Senator Harpootlian advanced the
15 opinion that we should have a
16 racially polarized voting analysis
17 conducted in advance of the Senate
18 and congressional process. I
19 expressed the opinion that it was
20 not useful. And the Senate, we did
21 not, at least implicitly, the
22 subcommittee did not agree with
23 Senator Harpootlian, and I mean that
24 just the Senate did not vote or
25 direct us to conduct that. I

1 TERRENI

2 shouldn't say we. I can't speak for
3 them.

4 After this question can we
5 take just a five-minute break?

6 MS. ADEN: Yes. Why don't we
7 stop and we will return to that.

8 THE WITNESS: I appreciate
9 that. We will come back at three
10 maybe. Is that okay?

11 MS. ADEN: Sounds great.

12 (Whereupon, there is a recess
13 in the proceedings.)

14 Q. Before the break I believe
15 you mentioned not agreeing that a
16 racially polarized voting analysis
17 was necessary, at least in the early
18 part of 2021. Can you explain why?

19 A. Yes, ma'am. We had no
20 reason to believe at the time that
21 we were going to have an issue with
22 Section 2 compliance. No claims had
23 been asserted. Nobody really
24 threatened them. The sixth
25 congressional district which would

1 TERRENI

2 have been the likely target of that
3 claim had been upheld against a
4 Section 2 challenge by the court ten
5 years ago. And the upside, if there
6 was one, of conducting a racially
7 polarized voting analysis in my
8 opinion outweighed the downside, at
9 least what I told the subcommittee,
10 and the downside being that all of a
11 sudden race would have been in the
12 middle of the room and that we would
13 risk making race or some artificial
14 target the -- derived from that
15 polarized voting analysis the
16 predominant factor or at least
17 expose ourselves to accusations that
18 it was. So at that point with no
19 Section 2 claim -- facing no Section
20 2 claim we didn't think it was
21 necessary.

22 Q. Are you aware of whether
23 the black voting age population in
24 congressional District 6 was reduced
25 as compared to under the 2011

1 TERRENI

2 benchmark map?

3 A. It was.

4 Q. Okay. How did you or the
5 Senate assess whether or not that
6 district would still perform with
7 the change in the BVAP having not
8 looked at racial bloc voting
9 patterns in that district?

10 A. It was an educated judgment
11 in the sense that it was not a
12 substantial diminution of the black
13 population. It was not all the
14 Senate districts around the state.
15 The minority Senate districts were
16 facing reduced black population
17 because the state Senate certainly
18 as a whole -- I mean, excuse me,
19 black population as a whole had been
20 reduced including the BVAP.

21 I had heard Congressman
22 Clyburn himself say that he didn't
23 think his district needed as much
24 BVAP. I think he was quoted
25 publicly saying that. And we didn't

1 TERRENI

2 really hear anybody arguing that it
3 needed to be maintained above that.
4 I believe perhaps the NAACP's
5 comments did mention it, but didn't
6 -- mentioned that there could be a
7 reduction but I don't even think
8 your organization took a strong
9 stand about it, but I don't want to
10 speak for you. So we didn't feel it
11 was a problem given the relatively
12 small reduction in BVAP.

13 Q. But it was an educated
14 guess not an analysis reduced to
15 writing?

16 A. Correct.

17 Q. Is it your view that the
18 black population in South Carolina
19 has gone down between the 2010
20 census and the 2020 census?

21 A. That's my recollection.

22 Q. Have you seen an analysis
23 reflecting that?

24 A. I have seen the PL data.

25 Q. Is it possible that the

1 TERRENI

2 population has not been reduced but
3 that it may have moved throughout
4 South Carolina?

5 A. I think the PL data was
6 statewide. It's possible that the
7 population -- that as a percentage,
8 I didn't mean hard numbers, I meant
9 the percentage -- that the
10 percentage of BVAP statewide I
11 believe is lower than it was during
12 the last census results.

13 Q. But in certain parts of the
14 state because of movement and
15 demographic changes it could have
16 grown in certain counties or
17 districts in the state?

18 A. Right. I meant statewide.

19 Q. I'm going to direct your
20 attention to tab 33, which is the
21 transcript from the September 17th,
22 2021, Senate Judiciary Committee
23 with Bates stamp number 3484, 3571.

24 A. Okay.

25 Q. So I think, I'm sorry, for

1 TERRENI

2 Ms. Ruggieri's purposes tab 28
3 should have been Plaintiffs' Exhibit
4 12.

5 MS. ADEN: Is that what you
6 also have, Mr. Gore?

7 MR. GORE: Let me see. Yes.

8 MS. ADEN: And then tab 33,
9 which we are just about to talk
10 about, would be Plaintiffs' Exhibit
11 13.

12 (Plaintiffs' Exhibit 13,
13 Transcript from 9/17/2021 Senate
14 Judiciary Committee, Bates
15 SCSENATE_00003484, marked for
16 identification, as of this date.)

17 Q. Do you have the transcript
18 in front of you, Mr. Terreni?

19 A. Yes, ma'am.

20 Q. Do you recall being in
21 attendance at this meeting?

22 A. I do.

23 Q. I want to turn your
24 attention to page 14, South Carolina
25 Senate 3498, lines 4 through 9, and

1 TERRENI

2 have you read aloud the sentence
3 that begins with -- let me stop and
4 say would you agree that in this
5 paragraph Senator Harpootlian's
6 statements are being transcribed on
7 page 14 in lines 5 through 9?

8 A. They appear to be.

9 Q. Could you read the sentence
10 that begins "So we don't even" at
11 line 5?

12 A. "So we don't even have
13 racial bloc. So how are you going
14 to do a Section 2 analysis without
15 that data? So I would almost say
16 this constitutes willful wantonness.
17 No, it does constitute willful
18 wantonness."

19 Q. So is it fair to say at
20 least as of September 17th of 2021
21 Senator Harpootlian is looking for
22 the data to be able to do a racial
23 bloc analysis in order to assess
24 whether or not there's a Section 2
25 issue?

1 TERRENI

2 A. Senator Harpootlian, as I
3 recall, asked for two things. He
4 initially asked for an analysis. He
5 then asked for data with which to do
6 an analysis. I responded to Senator
7 Harpootlian that I didn't believe --
8 to my recollection, that I didn't
9 believe the analysis was useful for
10 the subcommittee at the time, but
11 that the data that he or other
12 members of the public might wish to
13 use to conduct the racial bloc
14 voting analysis or at least some of
15 it to the extent that we could
16 access it, would be made available
17 in short time and, in fact, it was.

18 Q. But as of September 17th it
19 does not appear that the Senate had
20 compiled the necessary data to do a
21 racial bloc analysis, is that fair
22 to say?

23 A. Yes, ma'am.

24 Q. Looking at tab 17, which
25 should be Plaintiffs' Exhibit 14,

1 TERRENI

2 this is an email from Lea Aden, me,
3 to the Senate Redistricting
4 Subcommittee dated October 8th,
5 2021, which includes Senate and
6 congressional map submissions along
7 with --

8 A. I'm sorry, could you --
9 which tab?

10 Q. Tab 17 I hope.

11 A. Oh, I'm sorry. I opened
12 the wrong one.

13 Yes, ma'am.

14 Q. Okay. Plaintiffs' Exhibit
15 14, it's an email from again me to
16 the Senate Redistricting
17 Subcommittee dated October 8th,
18 2021. It includes Senate and
19 congressional map submissions along
20 with attachments with Bates stamp
21 South Carolina Senate 3798 to 3834.

22 (Plaintiffs' Exhibit 14, Email
23 from Leah Aden to the Senate
24 Redistricting Subcommittee, Bates
25 South Carolina Senate 3798 to 3834,

1 TERRENI

2 marked for identification, as of
3 this date.)

4 Q. Do you -- this is sent from
5 me to the Senate redistricting
6 email. I guess I have a question
7 for you which we haven't gotten to
8 which is whether or not you had
9 access to this email box for the
10 Senate?

11 A. No, not directly that I
12 recall. But it probably would have
13 been forwarded to me at some point.

14 Q. And was that the normal
15 practice, that things were forwarded
16 to you from this email inbox if you
17 did not have access to it?

18 A. Yeah. I'm not saying
19 everything was, but if was a plan
20 submission or something like this it
21 generally would have been sent to
22 me.

23 Q. And who would send it to
24 you?

25 A. That could vary depending

1 TERRENI

2 on who the recipients were. As a
3 matter of course, if Michelle indeed
4 was on the email she may have sent
5 it to me because she was kind of was
6 doing logistics. Could have been
7 Andy, but generally somebody would
8 make sure I got it.

9 Q. Do you recall reviewing
10 this submission?

11 A. Yeah.

12 Q. I want to focus on Bates
13 stamp number South Carolina Senate
14 3807, which is -- should be page 10
15 of the pdf, 10 of 37 of the pdf.

16 A. Okay.

17 Q. Is it fair to say looking
18 at the first paragraph of this
19 letter to the Senate that the South
20 Carolina NAACP believes that any
21 racial bloc voting is a
22 consideration that the subcommittee
23 should be taking into account during
24 redistricting?

25 A. I'm sorry, I was on the

1 TERRENI

2 wrong page.

3 Are you talking about Bates
4 number 0003 --

5 Q. 3807?

6 A. 3817?

7 Q. 3807.

8 A. 07. Yes.

9 Q. So yes --

10 A. Wait a minute. Please
11 repeat your question.

12 Q. Yes. Is it fair to say
13 that based upon the first paragraph
14 of this, in this letter on 3807 that
15 the South Carolina NAACP is urging
16 the subcommittee to consider any
17 racial bloc voting as it performs
18 redistricting this cycle?

19 A. Yes.

20 Q. And is it fair to say that
21 the South Carolina NAACP is
22 advancing that it believes racial
23 bloc voting continues to exist in
24 various elections in South Carolina?

25 A. Yes.

1 TERRENI

2 Q. And is it fair to say that
3 looking at this page the South
4 Carolina NAACP provides data from
5 three elections, the 2020 Senate
6 election and in the footnote 26, the
7 2018 Treasurer and 2018 Secretary of
8 State. It's analysis that there is
9 racial bloc voting in at least those
10 three elections in South Carolina?

11 A. It's fair to say the NAACP
12 said as much, yes.

13 Q. Do you have any reason to
14 disagree that those racial bloc
15 voting findings are erroneous?

16 A. I don't have any reason to
17 agree or disagree, I haven't
18 examined it.

19 Q. Do you recall attending a
20 November 12, 2021, Senate
21 redistricting subcommittee meeting?

22 A. If we look at the
23 transcript, but you might refresh my
24 memory. Do you have the document?

25 Q. Let's look at tab 19 which

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TERRENI

will be Plaintiffs' Exhibit 15. And
this should be the November 12th
transcript of the Senate
redistricting hearing South Carolina
Senate 11729, 11843.

(Plaintiffs' Exhibit 15,
Transcript of the Senate
redistricting hearing, Bates South
Carolina Senate 11729, 11843,
marked for identification, as of
this date.)

A. I believe I attended.

Q. If you look at page 24,
South Carolina Senate 11752, and I'm
talking about the page numbers in
the top right-hand corner of the
actual transcript not the pdfs.

A. Yes.

Q. Can you read into the
record slowly lines 12 through --
I'm sorry, 2 through 12?

A. "Senator Harpootlian: The
League -- maybe you know the League
subjected our -- our plan, the

1 TERRENI

2 subcommittee's working plan, to
3 racial bloc voting analysis. Did
4 you?"

5 John Ruoff: "You know, I have
6 looked at racial bloc voting
7 analyses but we have not done a
8 specific rbv analysis of these
9 districts as drawn now."

10 Senator Harpootlian: "And to
11 your knowledge, the staff hasn't
12 either; is that correct?"

13 John, and it says John Day, it
14 should be John Ruoff: "I don't
15 know. Mr. Terreni and I had a
16 conversation about them during that
17 before the maps were drawn but I
18 don't know whether the staff."

19 Q. Do you recall having a
20 conversation with John Ruoff, and
21 it's spelled R-U-O-F-F, not as roof
22 as it's written in this transcript,
23 as Mr. Ruoff describes in this
24 proceeding?

25 A. Yeah.

1 TERRENI

2 Q. And do you -- so you don't
3 have any reason to dispute that at
4 least before November 12, 2021, you
5 had a conversation with Dr. Ruoff
6 about the Senate doing an RPV
7 analysis?

8 A. No. I had a conversation
9 with Dr. Ruoff about him doing an
10 RBV analysis. Specifically I asked
11 him if he was going to do one. He
12 said no, that he didn't have the
13 resources to conduct that. And I
14 also had a, in that same
15 conversation said well, given that
16 somebody may want to do one at some
17 point in time could we update your
18 list of black/white elections that
19 you compiled in the 2010 scope. And
20 Dr. Ruoff agreed that that would be
21 a good idea so that people weren't
22 caught flat-footed if they needed
23 one.

24 Dr. Ruoff in 2010, probably
25 going back to 2000, although I

1 TERRENI

2 wasn't directly involved with
3 Dr. Ruoff doing this, had maintained
4 this list that became kind of a
5 source document for election -- for
6 experts to use in selecting
7 elections for their analyses just so
8 they could know, hey, I want to use
9 this [inaudible]. We needed to
10 update that list for the past ten
11 years.

12 And then in the 2010 election,
13 in the 2010 cycle we thought it was
14 much more likely we would need such
15 an analysis. Dr. Ruoff and the
16 Senate entered into a collaborative
17 agreement in which we would help
18 update that information and we would
19 share it with Dr. Ruoff and the
20 public. We did that in 2010. We
21 did it again in 2020. So that was
22 part of that conversation with
23 Dr. Ruoff. So that it could be done
24 if it needed to be done and that
25 everybody would be working from the

1 TERRENI

2 same list of elections if they
3 wanted to.

4 Q. So you trusted or the
5 Senate trusted Dr. Ruoff to put --
6 to compile relevant elections that
7 anyone could use to consider racial
8 bloc voting analysis, is that fair
9 to say?

10 A. Well, the Senate assisted
11 Dr. Ruoff. We made some bloc works
12 available or staff available to help
13 him identify those races using the
14 State Election Commission's voter
15 file and put it together, but so
16 yeah, we trusted Dr. Ruoff to guide
17 the Senate in doing that and we are
18 happy to work together with
19 Dr. Ruoff in that document that I
20 believe was published on the Senate
21 website. You may have it in your
22 discovery.

23 Q. You mentioned updating it
24 to include elections featuring black
25 and white candidates. Why was that

1 TERRENI

2 -- why were those particular
3 elections relevant?

4 A. Because Dr. Ruoff and other
5 experts in the past had said that
6 those elections, at least some of
7 them, were particularly probative to
8 -- for use in racial bloc voting
9 analyses.

10 That's as far as I have gotten
11 into it. I knew that's what they
12 needed, that's what they said they
13 wanted, we would provide it.

14 Q. Let's look at tab 18, which
15 will be Plaintiffs' Exhibit 16,
16 which is an email chain with Breeden
17 John copying two people at
18 elias.law, E-L-I-A-S dot law.

19 A. Yes, ma'am.

20 Q. -- dated December 9, 2021,
21 South Carolina Senate 3372 through
22 80. And it attaches a document
23 identified as South Carolina 2012
24 through 2020 Elections Voting Data
25 Final and the subject is "Request

1 TERRENI

2 for state racial bloc voting data."

3 A. Yes ma'am.

4 (Plaintiffs' Exhibit 16, Email
5 chain, Bates South Carolina Senate
6 3372 through 3380, marked for
7 identification, as of this date.)

8 Q. Is this reflecting the
9 compilation of data to do an RBV
10 analysis that you mentioned
11 Dr. Ruoff and the Senate worked
12 together to prepare?

13 A. I believe it is.

14 Q. And can you read the first
15 two sentences on South Carolina
16 Senate 3372 which begins with "The
17 attached file"?

18 A. "The attached file was
19 created through cooperative research
20 by the South Carolina Senate
21 Judiciary Committee and Dr. John
22 Ruoff as their Memorandum of
23 Understanding states."

24 And then it goes -- I don't
25 know if you want me to keep reading.

1 TERRENI

2 Q. Yes, that first sentence
3 only.

4 A. Okay.

5 Q. The parties -- I'm sorry,
6 of the next paragraph. It reads:
7 "The parties recognize that the
8 results of certain election contests
9 held in South Carolina since the
10 year 2010 may be needed by the
11 Senate to prepare a redistricting
12 plan to be enacted after the release
13 of the 2020 census results."

14 Do you know if this data was
15 available before December 9, 2021?

16 A. I believe it may have been.
17 I mean I believe so, yes.

18 Q. Okay.

19 A. I don't know when it was
20 finally compiled but I believe it
21 was.

22 Q. And once it was compiled it
23 would have been put up on the
24 Senate's website?

25 A. That was the arrangement,

1 TERRENI

2 yes.

3 Q. And though the data was
4 collected there was not a related
5 racial bloc voting analysis done
6 pursuant to that data by the Senate?

7 A. Correct.

8 Q. Okay. Could the Senate
9 have hired someone to do that
10 analysis if it didn't have staff
11 trained to do so?

12 A. Racial bloc voting
13 analysis?

14 Q. Yes.

15 A. Yes.

16 Q. I just want to look back at
17 tab 1, which should be the --

18 A. Guidelines?

19 Q. -- guidelines just to
20 confirm within the guidelines on
21 South Carolina Senate 22357 to
22 22358, is there anything on this
23 guideline that indicates that
24 congressional District 7 should
25 remain as close to the benchmark

1 TERRENI

2 2011 plan as possible for
3 congressional redistricting?

4 A. No. There's not.

5 Q. Is there anything within
6 these guidelines expressly stating
7 that the public and/or the
8 legislature preferred a map that
9 minimally made changes between the
10 2011 map and the one to be enacted?

11 A. I don't think so.
12 Constituent consistency and
13 preserving cores was a factor but it
14 didn't express a preference, no.

15 Q. Do you think the average
16 member of the public would
17 understand, would equate preserving
18 the cores of constituencies with
19 making a map that minimally changes
20 districts between the 2011 map and
21 the 2020 map?

22 A. I don't know, but it
23 wouldn't be intended for them to
24 reach that understanding. That
25 wasn't a foregone conclusion. These

1 TERRENI

2 criteria would have resulted in --
3 could have weighed other factors
4 above core constituent consistency
5 or cores and the map could have been
6 radically different than the one you
7 submitted.

8 Q. Except for core
9 constituency could not supercede
10 one person one vote Section 2
11 compliance and nondilution,
12 nonracial gerrymandering?

13 A. And nonracial
14 gerrymandering?

15 Q. It could not supercede
16 racial gerrymandering --

17 MR. GORE: Object to form.

18 MS. ADEN: I object to my own
19 form.

20 Q. Core constituency could not
21 supercede compliance with one person
22 one vote compliance with Section 2
23 and it could not lead to racial
24 gerrymandering under the guidelines?

25 A. Correct.

1 TERRENI

2 Q. Do you see anything in
3 these guidelines that articulates
4 that Beaufort should remain in CD 1
5 and not be put in CD 2?

6 A. Not explicitly. That's an
7 outcome.

8 Q. But that is something that
9 was debated during the legislative
10 process?

11 A. Yes.

12 Q. And similarly you don't see
13 anything expressly in these
14 guidelines that says keep Fort
15 Jackson in CD 2 with -- in CD 2?

16 A. Again, not expressly, no.

17 Q. And is there anything in
18 this instruction that says make
19 Congressional District 1 likely to
20 elect a Republican congressional
21 candidate or be Republican leaning?

22 A. Not specifically, no.

23 Q. And unspecifically where do
24 you think it says that or suggests
25 that?

1 TERRENI

2 A. It doesn't -- I'm sorry --
3 it doesn't specifically say that or
4 even nonspecifically. It does say
5 congressional District 1 should be
6 Republican leaning. No, that's not
7 a guideline.

8 Q. In tab 12, which should be
9 plaintiffs Exhibit 17.

10 A. Tab 12, okay.

11 Q. This should be an email
12 cover from Holi, H-O-L-I, Miller, or
13 two Ls. Is that two Ls or one L? I
14 can't see. Two Ls, H-O-L-L-I Miller
15 on behalf of Senator Harpootlian
16 copying you, Mr. Terreni dated
17 September 16, 2021 with the subject
18 "Notice of redistricting
19 subcommittee meeting" and it's
20 attaching a letter to Luke Rankin.
21 This is Bates stamped South Carolina
22 Senate 3387 to 95. Can you take a
23 moment to -- I'll direct you to
24 particular things, but it's a
25 nine-page pdf.

1 TERRENI

2 (Plaintiffs' Exhibit 17, Email
3 cover from Holli Miller, Bates
4 South Carolina Senate 3387 to 3395,
5 marked for identification, as of
6 this date.)

7 Q. Do you remember receiving
8 this cover letter and the
9 attachment?

10 A. Yes.

11 Q. And are the recipients also
12 other subcommittee members besides
13 Senator Harpootlian?

14 A. A lot of them, yes.

15 Q. Are there also Senate staff
16 on that?

17 A. Yes. There are some Senate
18 staff and then other people I don't
19 recognize.

20 Q. Looking at South Carolina
21 Senate 3389 to 3393, so this is the
22 actual letter. As a general matter
23 what did you understand Senator
24 Harpootlian was doing with this
25 letter?

1 TERRENI

2 A. Proposing legislative
3 guidelines or redistricting
4 guidelines for consideration of the
5 committee.

6 Q. Can you read just the first
7 and last sentence of the paragraph
8 on 3390? The first sentence begins
9 with "However" and last begins with
10 "Because."

11 A. "However, what is not clear
12 from the draft guidance is what the
13 subcommittee contends would rise to
14 the level of vote dilution under the
15 VRA or the Constitution. For
16 example" --

17 Q. Let's stop -- not there.
18 Can you go to the last sentence,
19 "Because"?

20 A. "Because the threshold
21 requirements must be met before a
22 litigant could even argue if the
23 court should force the state to draw
24 a majority-minority district, the
25 legislature should not voluntarily

1 TERRENI

2 undertake such a task in
3 anticipation of such a challenge
4 without first making sure these
5 conditions were met."

6 Q. And then looking at the
7 next paragraph, is it fair to say
8 that Senator Harpootlian is asking
9 the subcommittee staff to produce a
10 document, a written document that
11 fully explains what the subcommittee
12 should credit as sufficient evidence
13 of vote dilution to warrant a
14 remedial racial redistricting under
15 Section 2 or the constitution?

16 A. That's what it says.

17 Q. And is it fair to say in
18 the last sentence he says: "In the
19 absence of such data and analysis I
20 do not believe the state can
21 credibly claim to be acting in
22 furtherance of the VRA or the
23 Constitution when subordinating
24 other race neutral considerations to
25 draw majority-minority districts."

1 TERRENI

2 Did I accurately read that?

3 A. It does.

4 Q. And does it reflect that
5 Senator Harpootlian thinks that an
6 analysis of a potential vote
7 dilution is necessary not just to
8 defend against a Section 2 lawsuit
9 but also to defend against a
10 constitutional challenge such as a
11 racial gerrymandering or an
12 intentional discrimination
13 challenge?

14 A. Given what he said, you
15 know, it would be defense and to a
16 racial gerrymandering claim is,
17 quote, in furtherance of the VRA,
18 unquote, which would mean Section 2
19 compliance. This is a defense to
20 racial gerrymandering because he
21 says when subordinating other race
22 mutual considerations to draw a
23 majority-minority district is just
24 something we didn't do.

25 Q. And we, the plaintiffs,

1 TERRENI

2 have brought a racial gerrymandering
3 lawsuit, correct?

4 A. Correct.

5 Q. Okay. Do you know if
6 Senator Harpootlian's request for
7 this analysis was adopted?

8 A. It was not.

9 Q. Read the first sentence of
10 the next paragraph aloud beginning
11 with "However, I believe."

12 A. Are you talking the second
13 paragraph in Section 3?

14 Q. I'm sorry, second paragraph
15 under 3 Avoidance of Racial
16 Gerrymandering, South Carolina
17 Senate 3390.

18 A. "However, I believe the
19 subcommittee should seek guidance
20 from committee staff in order to
21 enact a policy that seeks to correct
22 racial decisions or decision-making
23 that serves as the predicate for the
24 choices reflected in your benchmark
25 plan."

1 TERRENI

2 Q. And then if you could just
3 read the last sentence on 3391,
4 which is the next page, beginning
5 with "In light of." It's the last
6 sentence of the first nonfull
7 paragraph on the South Carolina
8 Senate 3391.

9 A. Just tell me where it
10 begins and I'll --

11 Q. You are in the right
12 paragraph. It's just I'm focusing
13 on the last sentence, which reads:
14 "In light of U.S. Supreme Court
15 precedent --

16 A. Yes. I'm sorry.

17 Q. -- over the last decade."

18 A. I'm sorry. "In light of
19 U.S. Supreme Court precedent over
20 the last decade I believe our
21 guidelines should be updated to
22 recognize the districting decisions
23 the legislature made a decade ago
24 under the auspices of Section 5 were
25 based on a flawed view of VRA that

1 TERRENI

2 was unconstitutionally in effect at
3 the time those decisions were made."

4 Q. And this guidance from the
5 committee staff about correcting
6 racial decision-making from the
7 benchmark plan, was that
8 recommendation adopted?

9 A. This isn't guidance from
10 the committee staff.

11 Q. Excuse me.

12 A. You asked me if this
13 guidance from the committee staff
14 correcting racial discrimination in
15 the benchmark plan was adopted, and
16 I'm saying --

17 Q. I'm sorry, that's not the
18 question. Was the request that the
19 committee do that analysis or seek
20 guidance from staff, was that
21 request taken up, adopted?

22 A. Senator Harpootlian's
23 request was not adopted because
24 committee staff and the committee
25 did not think the existing districts

1 TERRENI

2 were unconstitutionally drawn, which
3 is the premise of these requests.

4 Q. Okay. But he asked for it
5 and it was not taken up, that's the
6 question?

7 A. Correct.

8 Q. Okay. And looking at South
9 Carolina Senate 3392, there is a
10 paragraph D in the middle of the
11 page identified as Maintaining
12 District Cores. And it reads:

13 "While I agree we should maintain
14 district cores when possible, other
15 considerations stated above should
16 be given priority and we should
17 recognize that maintaining district
18 cores could simply ossify problems
19 caused by past districting efforts.
20 Accordingly, I give this some but
21 relatively low weight."

22 Does that opinion square with
23 the way that district cores or core
24 constituency is characterized in the
25 guidelines that were actually

1 TERRENI

2 adopted?

3 A. Well, we have to -- when he
4 says district cores should be
5 subordinated to the other criteria
6 above, no. It is not consistent
7 with the way the guidelines were
8 adopted or implemented because under
9 his criteria he would have
10 prioritized counties and cities and
11 voting precincts and not splitting
12 or minimizing -- so in other words,
13 he would elevate A, B, C -- A and B
14 and C, as I look at this now it's
15 been a while, over district cores.
16 So A is not consistent with the way
17 the subcommittee directed
18 redistricting to take place.

19 Q. And A that you are
20 referring to is in the Senate
21 guidelines, which is communities of
22 interest?

23 A. No, ma'am. It's in his
24 guidelines which is counties.

25 Q. Okay. I'm sorry, I didn't

1 TERRENI

2 know what you were referring to,
3 which document you were referring
4 to.

5 A. I'm on the page you told me
6 to be on, which is the 3392 and he,
7 Senator Harpootlian proposed the
8 district cores should be given
9 priority -- other considerations
10 above should be given priority, I'll
11 read that and understand over
12 district courts. And those other
13 considerations were counties, towns,
14 cities and precincts.

15 So the way he's phrased this
16 you would prioritize not splitting
17 the precinct down to being able to
18 maintaining the district core.
19 That's just not consistent with what
20 the Senate adopted. Which I think
21 was your question.

22 Q. Did the maintaining
23 district cores during the Senate's
24 map, at least part of the Senate's
25 map making process, did that

1 TERRENI

2 ultimately take priority over some
3 of those identified criterias like
4 counties, keeping counties whole,
5 keeping towns and cities whole in
6 your view?

7 A. It didn't necessarily take
8 priority in the process. Well, it
9 wasn't mandated that it take
10 priority but the resulting plan did
11 certainly prioritize maintaining
12 cores of splitting precincts,
13 although it didn't split many VTDs.
14 As the process progressed I think it
15 was fair to say that the legislature
16 and the subcommittee members that
17 supported the plan, prioritized
18 maintaining the cores of these
19 districts or weighed that factor to
20 be more significant than others.
21 Not all of them but in perhaps
22 others once.

23 Q. Can you tell me which
24 others in the guidelines you think
25 fell below -- I'm sorry -- you think

1 TERRENI

2 came before core constituency that
3 were not one of the federal
4 requirements?

5 A. It's a good question,
6 Ms. Aden. I imagine for different
7 people --

8 Q. Looking for that all day.
9 Go ahead.

10 A. You've asked a lot of good
11 questions. I imagine for different
12 people it meant different things.
13 Certainly they were merged so that
14 the minimal change in this plan was
15 something that was appreciated by a
16 lot of notes. But there were other
17 factors too. It's not an either/or
18 thing. I mean Berkeley County, for
19 instance, was whole, the VTD splits
20 were not terribly prevalent. There
21 was certainly a reduction from the
22 previous plan. So I don't know
23 there was --

24 I'm trying to answer your
25 question but I suppose what I'm

1 TERRENI

2 saying is different members had
3 different motivations. Certainly
4 many members pointed to an advantage
5 of this plan as being that it was
6 the least change -- that it was a
7 least or a lesser change plan from
8 the existing plan. That they liked
9 the existing plan and the changes
10 here were not terribly upsetting.

11 Q. I would like to turn to the
12 initial staff map and some questions
13 about that, but I want to do a, if
14 we could go off the record for a
15 second and do both a time check and
16 a whether people need a five-minute
17 break before we turn to that
18 subject.

19 MR. GORE: A break is always
20 great. I would like a five-minute
21 break.

22 (Whereupon, there is a recess
23 in the proceedings.)

24 Q. Turning to the map room,
25 were you in the map room when

1 TERRENI

2 members of the legislature would
3 come into the map room to consider
4 congressional maps, Mr. Terreni?

5 A. Often.

6 Q. And when members of the
7 legislature would come in to
8 consider congressional maps, was
9 race data available to them as they
10 were drawing maps?

11 A. If they requested it, it
12 was.

13 Q. Excuse me? I'm sorry.

14 A. If they requested it, it
15 was.

16 Q. Was it a feature that you
17 would agree could be turned on or
18 off in Maptitude while maps were
19 being developed?

20 A. It could be displayed.

21 Q. Okay. And you would agree,
22 though, that when maps were -- the
23 maps were proposed the initial staff
24 plan and those that follow that they
25 came along with a summary report

1 TERRENI

2 which included race data?

3 A. Yes.

4 Q. So turning to the initial
5 staff plan I think we talked earlier
6 that the development of that plan
7 happened around November or so after
8 the Senate map making had been
9 completed, is that fair to say?

10 A. Yes.

11 Q. As congressional
12 redistricting was underway, did you
13 or were you aware of anyone having a
14 plan for the trajectory of how the
15 bill would proceed through the
16 legislative process?

17 A. Yeah. We discussed how the
18 bill could move through the
19 legislative process. The House was
20 considering a congressional plan,
21 the Senate obviously was and one way
22 or another either the Senate was
23 going to amend the House bill or we
24 were going to exchange bills or --
25 so different scenarios were explored

1 TERRENI

2 for how to move this through as
3 efficiently as possible or through
4 this. Efficiently is probably not
5 the best word in legislation.

6 Q. On November 23, 2021, the
7 Senate Redistricting Subcommittee
8 publicly posted a plan called the
9 2021 Staff State Congressional Plan.

10 Do you recall that proposal,
11 Mr. Terreni?

12 A. Give me that date again,
13 please.

14 Q. November 23, 2021.

15 A. Yes, ma'am.

16 Q. And it's fair to say you
17 had a role in developing the
18 Senate's initial staff plan?

19 A. Yes, ma'am.

20 Q. And it's fair to say that
21 Jones Day had a role in developing
22 the initial staff plan?

23 A. They had a -- they advised
24 us -- they gave legal advice in the
25 development of the initial staff

1 TERRENI

2 plan. They had no role in drawing
3 it.

4 Q. To be clear, did you have a
5 role in actually drawing the initial
6 staff plan?

7 A. No, ma'am. Will Roberts
8 was our protographer.

9 Q. Did you direct Will Roberts
10 in any regard with respect to the
11 initial staff plan?

12 A. Not in -- direct is a
13 loaded word. I would have had
14 conversations with Will about the
15 staff plan as it was developed. I
16 might have asked questions about
17 whether these things were feasible.
18 I don't remember directing Will to
19 do anything.

20 Q. Do you recall telling
21 Mr. Roberts to develop a map that
22 considers the Senate's adopted
23 criteria?

24 A. I don't know that I had to
25 tell Mr. Roberts that. He already

1 TERRENI

2 knew, he was an experienced mentor,
3 but if I ever reinforced it, it
4 wouldn't surprise me.

5 Q. Did you ever direct or tell
6 Mr. Roberts to develop an initial
7 staff map that responded to Senator
8 Rankin's request that CD 7 be the
9 least changed district from the
10 benchmark plan?

11 A. I may have. He may have
12 heard that himself, but I may have.
13 It wouldn't surprise me if I did.

14 Q. Was it possible that
15 Mr. Roberts or Mr. Fiffick or any of
16 the other staff heard stuff from
17 other people and that went into the
18 initial staff plan even if it wasn't
19 something that was specified on
20 these Senate adopted guidelines?

21 A. Yes.

22 Q. And then did you guys talk
23 about that or how did -- who was the
24 decision-maker about whether this
25 other stuff that was being talked

1 TERRENI

2 about made it into the initial staff
3 plan?

4 A. The staff plan was an
5 initial draft for the consideration
6 of the members. The staff plan, as
7 I recall, was largely developed by
8 Mr. Roberts. He had a plan that he
9 thought could work that was a good
10 starting point to bring to the
11 subcommittee, and he showed it to us
12 and we may have had some discussion
13 about one feature or another and
14 then the staff plan developed from
15 that.

16 I hope that answers your
17 question. It was a group thing.

18 Q. And how -- when you said
19 there was feedback or there was
20 discussion about one feature or the
21 other, did that lead to him coming
22 up with like another iteration
23 before it became the final initial
24 staff plan, were there like versions
25 of this map that were being

1 TERRENI

2 developed before there was the
3 initial staff plan that was given to
4 the subcommittee?

5 A. I believe so. If you
6 consider a version every iteration
7 of the map, meaning every time a
8 change was made that's a version,
9 yes. I mean was the map changed
10 from the first time Will displayed
11 it on the screen for us, I'm sure it
12 was.

13 Q. Did any subcommittee member
14 have access to the initial staff
15 plan before it was publicized on
16 November 23rd?

17 A. I don't believe so. We
18 were kind of in a rush to get it
19 out.

20 Q. Based upon your past work
21 with congressional redistricting was
22 it normal for subcommittee members
23 to not have seen a draft of the map
24 before it was publicized?

25 A. It was not abnormal for

1 TERRENI

2 some subcommittee -- I mean the last
3 time, 2010 was a very different
4 process in that there was going to
5 be a new set of congressional
6 district. That engendered a lot of
7 interest on behalf of members. So
8 there was more intense interest in
9 the congressional plan.

10 Either way members knew their
11 way to our office. If they wanted
12 to come in, they were certainly
13 welcome to. I don't remember there
14 being a break in the old interest
15 about this congressional plan from
16 many members and I don't believe any
17 member had any [inaudible] before
18 the staff plan was promulgated.
19 Again, that was a very quick
20 turnaround. And I just think the
21 circumstances were so different.
22 There were a lot of people that had
23 -- were very interested in what the
24 district was going to require.

25 Q. In 2010?

1 TERRENI

2 A. Yes, ma'am.

3 Q. When you said showed us,
4 can you just briefly reiterate who
5 that us was who would have seen the
6 initial staff plan that Will Roberts
7 was largely developing?

8 A. Generally speaking, the
9 Senate Judiciary staff, I'm sure
10 Mr. Fiffick, Breeden would have seen
11 it. I imagine at some time
12 everybody did. Paula, Maura. I
13 don't know about Madison. But Paula
14 and Maura would have seen it likely.
15 I didn't mean to slight anybody by
16 leaving them out. But I mean that
17 was in --

18 Q. And just to be clear, did
19 Clark Bensen see this initial staff
20 plan before it was publicized?

21 A. No.

22 Q. Did Dale Oldham see this
23 initial staff plan before it was
24 publicized?

25 A. No.

1 TERRENI

2 Q. Did Adam Kincaid see this
3 initial staff plan before it was
4 publicized?

5 A. No.

6 Q. Did Reagan Kelly see this
7 initial staff plan before it was
8 publicized?

9 A. I'm almost certain he did
10 not because Reagan really expressed
11 at the beginning of the
12 congressional process that he
13 wanted -- he really didn't want
14 anything to do with it.

15 Q. He really didn't want to
16 what?

17 A. That he wasn't going to be
18 involved in the congressional
19 process. The only hedging I'm
20 getting is Reagan, certainly if
21 Reagan had walked in the room we
22 wouldn't -- knocked on the door and
23 wanted to come in we wouldn't have
24 turned him away, but I don't recall
25 him seeing it and I don't believe he

1 TERRENI

2 did.

3 Q. As the initial staff plan
4 was being developed, how was -- are
5 you aware of how Will Roberts or any
6 other Senate staffer was factoring
7 in the information received during
8 the public comment period?

9 A. Oh, he was there. He heard
10 it. He would have distilled it.
11 There were little details. You
12 know, an example that we all thought
13 of was there were members of Sun
14 City in Jasper County who expressed
15 a strong preference for remaining in
16 the same district with the remainder
17 of Sun City, which was largely
18 Beaufort County. So you'll see that
19 little protrusion in Jasper. That
20 was the result of public testimony.
21 So some of these features would be
22 absorbed in that way.

23 Q. Did Sun -- are the
24 demographics of Sun City largely
25 majority white?

1 TERRENI

2 A. I believe so, yes.

3 Q. But Jasper County is a
4 considered part of the black belt in
5 South Carolina?

6 A. Jasper County is a
7 significant African-American
8 population. I don't recall its
9 present demographics. There's been
10 a lot of spread out in Hilton Head
11 so I don't want to qualify that.
12 But generally speaking, yes, it
13 would be -- it would have a larger
14 African-American population than Sun
15 City, that's for sure.

16 Q. Do you know whether at any
17 point in developing the initial
18 staff plan or frankly any point
19 while the Senate was considering
20 congressional redistricting whether
21 anyone attempted to draw a Second
22 District in which black voters were
23 the majority of the district?

24 A. From the Senate staff or
25 the public submissions?

1 TERRENI

2 Q. Senate staff.

3 A. I don't believe anyone
4 purposefully set up to draw a black
5 majority District 6. I don't recall
6 if anyone drew a map in the course
7 of map drawing that was black
8 majority. That might not have been
9 the goal as far as I'm aware.

10 Q. My question I think was a
11 little bit different. But whether
12 outside of CD 6 whether anyone --
13 let's stop for a second. CD 6 prior
14 to this enacted map was a district
15 above 50 percent majority of black
16 voters under some measure of black
17 that the census provides?

18 A. Under the 2010 census that
19 certainly is the case. I don't
20 recall, Ms. Aden, if CD 6 was
21 majority black under the PL data
22 that was released. In other words,
23 prior CD 6 I don't know if there was
24 a majority district or at least a
25 BVAP majority district under the PL

1 TERRENI

2 data that was released in 2021.

3 Q. Assuming that it was
4 majority black voting age population
5 in CD 6 in 2011 based upon the 2011
6 enacted map, do you know if anyone
7 this cycle for the Senate attempted
8 to draw a Second District with the
9 majority of black voters?

10 A. Not for that express
11 purpose, I don't recall that
12 happening.

13 Q. What other unexpressed
14 purpose would there be?

15 A. Something else. I mean
16 there -- you could draw -- you could
17 be trying to draw a different
18 iteration of CD 6 to accommodate any
19 of the various recommendations that
20 were made by whomever. Maybe one of
21 those plans incidentally resulted in
22 a 50 percent district. I don't
23 know. That's what I'm saying. No
24 one sat down in the map room and
25 said we need a 50 percent

1 TERRENI

2 District 6.

3 Q. Have you heard the term "an
4 effectiveness analysis"?

5 A. Yes.

6 Q. What do you understand it
7 to be?

8 A. It's a statistical analysis
9 that seeks to predict whether the
10 minority community can elect a
11 candidate of its choice. That's my
12 general understanding of it.

13 Q. Have you seen effectiveness
14 analysis being performed -- when
15 have you seen effectiveness analysis
16 performed in your career?

17 A. In litigation, specifically
18 the Colleton County versus McConnell
19 case. I would have at a greater
20 distance witnessed it performed in
21 2020. I believe there would have
22 been some litigation, I mean some
23 effectiveness analysis conducted by
24 various parties who were commenting
25 on the preclearance submission in

1 TERRENI

2 two thousand -- I said '20. I'm
3 sorry. 2010. I don't believe I saw
4 any in this cycle that I recall.

5 Q. Can an effectiveness
6 analysis look at whether a district
7 will perform for a racial minority
8 group and/or for a particular
9 candidate?

10 A. Yes, I think so.

11 Q. Meaning an effectiveness
12 analysis can look at whether or not
13 black voters can elect their
14 preferred candidate of choice,
15 whoever that candidate is, including
16 a black representative. Is that
17 fair to say?

18 A. It is.

19 Q. But an effectiveness
20 analysis could also look at, for
21 example, whether or not the
22 Democratic candidate in a past
23 election would win under the
24 boundaries of a proposed new
25 district. Is that fair to say?

1 TERRENI

2 A. I think so, yes.

3 Q. Basically I guess my
4 question is was an effectiveness
5 analysis you can look at race and/or
6 party -- the candidate of a
7 political party's -- the impact --
8 strike that. I'll just move on.

9 While the initial staff plan
10 was being developed were there any
11 discussions about increasing,
12 decreasing or maintaining the black
13 voting age population in certain
14 districts?

15 A. There would have been an
16 awareness of the black population in
17 the Sixth District if we had seen a
18 plan that made a substantial
19 reduction in the black population in
20 the Sixth District and it was plan
21 that we wanted to pursue, we would
22 recognize that race and we then may
23 have been prompted to do further
24 inquiry.

25 I believe the Sixth District

1 TERRENI

2 plan, it was reduced by three or
3 four percentage points, if I
4 remember correctly, it wasn't much.
5 But whatever we did in the Sixth
6 District staff plan was not enough
7 to prompt that concern for us,
8 especially given that many of the
9 plan of the Senate districts from
10 which we had received the input of
11 African-American members were below
12 50 and we had not received any
13 concern from a Section 2 perspective
14 or really even from anyone else that
15 they weren't going to perform -- I
16 don't want to say a general
17 wholesale. But no, we didn't have a
18 concern about that in this context,
19 in the context of -- we didn't have
20 a concern about that with respect to
21 6 as it was in the staff plan.

22 I hope that answers your
23 question. If not, please restate
24 it.

25 Q. Is it your position that

1 TERRENI

2 there was no need to be aware of the
3 black voting age population in
4 districts outside of CD 6 this
5 cycle?

6 A. No. We were certainly
7 aware of it as those reports would
8 have produced it. We didn't see
9 anything in the plans that we
10 produced that caused us one concern
11 or the other.

12 Our primary -- I think our
13 primary concern would have been that
14 if we did something that
15 dramatically changed the racial
16 composition, really reduced it in
17 one of these remaining districts, we
18 might have been accused of some sort
19 of intentional racial drawing. That
20 wasn't what we were doing. We were
21 certainly sensitive to those
22 concerns, and so we would have
23 monitored the BVAP of different
24 plans but -- so yeah, we would have
25 looked at it for everybody.

1 TERRENI

2 Q. Outside of CD 6 did you
3 have any data, any basis to know one
4 way or the other whether a reduction
5 in the black voting age population
6 of 3 or 4 percentage points or even
7 some larger number would impact the
8 ability of black voters to elect a
9 candidate of choice or influence a
10 candidate of choice. Did you have
11 any analysis or data to backup
12 whether or not there would be that
13 impact outside of CD 6?

14 A. Certainly not to elect. As
15 far as influence, that evidence
16 would have been anecdotal. I mean
17 -- but so -- and I don't recall any.

18 Q. Do you think that black
19 voters based upon the way the staff
20 plan was developed could perceive
21 that outside the CD 6 their
22 electoral opportunity doesn't matter
23 to the Senate?

24 A. No.

25 Q. Why not?

1 TERRENI

2 A. Well, I don't want to
3 presume to speak for black voters,
4 that's simply not my place. But
5 they are entitled to participate in
6 elections. It's not a foregone
7 conclusion how they are going to
8 vote. And it's not a foregone
9 conclusion that their votes won't
10 matter or not matter just because
11 Republicans have been elected in
12 these other districts.

13 We have had hotly contested
14 elections in the state, as you know,
15 in the First District, in the Sixth
16 District -- excuse me, in the Second
17 District and there's no reason to
18 believe that a black voter or a
19 white voter or Hispanic voter or
20 anyone else might not have a
21 significant impact on these races.

22 Q. Would you agree, though,
23 that there's a perception about how
24 most black voters vote for
25 political -- for party affiliated

1 TERRENI

2 candidates?

3 A. There is a perception that
4 most white voters and, for democrats
5 I think that's been borne out
6 statistically, whether it's
7 predicted or not I don't know. I
8 suspect it is.

9 I guess what I'm saying is
10 it's not like we haven't had
11 uncompetitive elections. Joe Wilson
12 had a very strong challenge from
13 Adair Boroughs in the last race.
14 Joe Cunningham won the First
15 District. So if -- in a district
16 that as I recall had a similar
17 composition or one that we passed.
18 So if black voters, even we were to
19 take that jump, that black voters
20 are going to be loyally Democratic
21 as the courts have concluded based
22 on evidence in the past, that it
23 doesn't mean there's -- they have
24 very little influence in the
25 process.

1 TERRENI

2 Q. But there was no analysis
3 around the initial staff plan about
4 whether or not black voters'
5 preferences for candidates in some
6 of these hotly contested or nonhotly
7 contested elections would change or
8 not change under the proposed map?

9 A. No.

10 Q. After the redistricting
11 subcommittee published this
12 November 23rd map do you remember
13 what, if anything, you did on
14 congressional redistricting from
15 November 23rd until November 29th or
16 is this the time where you might
17 have been under the weather?

18 A. It is a time -- I mean 23rd
19 -- I believe Thanksgiving just a
20 couple days later, if I remember
21 from some of the testimony I saw in
22 your exhibits. The 23rd was a
23 Tuesday before Thanksgiving.
24 Thanksgiving is usually on a
25 Thursday so that would have taken us

1 TERRENI

2 to the 25th. I remember catching
3 COVID shortly or at least being
4 diagnosed with COVID shortly after
5 that. So to the extent I would have
6 seen the next subcommittee meeting
7 where -- I believe that was the one
8 in which Congressman Cunningham
9 testified, the former Congressman
10 Cunningham, I think I would have
11 watched that remotely and I would
12 have been out of the Senate offices
13 for several days, whatever the
14 protocol was from when I started to
15 feel better. Say basically I was
16 out for about a week or so but not
17 incommunicado.

18 Q. So there was a hearing
19 November 29th about that
20 November 23rd map. Did you prepare
21 any materials while you were under
22 the weather for that hearing.

23 A. I didn't prepare them. I
24 may have reviewed them.

25 Q. Do you recall preparing any

1 TERRENI

2 talking points in particular or
3 cheat sheets or other guidance for
4 staffers, Senate staffers, preparing
5 or reviewing those types of
6 documents for Senate staffers or
7 Senate leadership for this
8 November 23rd hearing -- 29th
9 hearing?

10 A. Not specifically.

11 Q. Were you in communication
12 with any Senate members or Senate
13 staff remotely while you were
14 watching that hearing on November
15 29th?

16 A. In -- no, I don't believe I
17 was. I know that my hookup -- I
18 seem to recall my hookup was
19 different than -- it's not like I
20 was in with the public blank, but I
21 don't think I had the wherewithal to
22 communicate directly with members.
23 I don't recall doing that. I don't
24 think I did.

25 Q. Looking at tab 8, which is

1 TERRENI

2 a transcription of the November 29,
3 2021, hearing that was transcribed
4 by a court reporter service and it's
5 Bates stamped South Carolina NAACP
6 CD 11844-11934.

7 A. Yes, ma'am.

8 (Plaintiffs' Exhibit 18,
9 Transcript of 11/29/2021 hearing,
10 Bates South Carolina NAACP CD 11844
11 through 11934, marked for
12 identification, as of this date.)

13 Q. This will be Plaintiffs'
14 Exhibit 18. I want to direct you to
15 the remarks of Will Roberts, which
16 go from pages 4 through 7.

17 A. Um-hmm.

18 Q. And in particular, I want
19 to direct you to page 5, which is
20 South Carolina Senate -- yes. South
21 Carolina NAACP, I apologize, Bates
22 stamped South Carolina NAACP CD
23 11848. So the Bates stamp is wrong
24 that I said before it's South
25 Carolina NAACP CD 11844 through

1 TERRENI

2 11934. And now we are looking at
3 page 5, which is 11848. Sorry.

4 If you look at line [sic] 5,
5 I'll represent that this is Will
6 Robert's speaking and providing an
7 overview of this congressional staff
8 plan. Do you see on line 5 -- on
9 page 5 line 6 that he refers to that
10 plan as a minimal change plan?

11 A. Yes, ma'am.

12 Q. And looking at that same
13 page, lines 7 through 11 it reads:
14 "Our goal was to bring the
15 congressional districts back into
16 deviation compliance, while
17 maintaining the core constituencies
18 of the districts. And with this
19 plan, we have accomplished that."

20 Do you see that?

21 A. Yes.

22 Q. Okay. Does that identify
23 two major goals for this initial
24 staff plan?

25 A. Yeah, that's fair to say.

1 TERRENI

2 Q. Does it say anything about
3 nondilution of minority voting
4 strength?

5 A. It does not.

6 Q. Does it say anything about
7 compliance with Section 2 or
8 nonracial gerrymandering?

9 A. No. I think those are
10 presupposed as we discussed earlier.

11 Q. But it has elevated core
12 constituencies which was an
13 additional consideration in the
14 criteria to one of the top two goals
15 of the map alongside one person one
16 vote. Is that fair to say?

17 A. Not over avoidance of
18 racial gerrymandering Section 2.
19 Will would have known that. I mean
20 those are nonnegotiable, right? So
21 he would have -- he said our goals,
22 I mean I think he assumed everybody
23 understood them, not trying to
24 violate federal law. So our goal
25 was to bring congressional districts

1 TERRENI

2 back into compliance -- check. I
3 mean that's something we'd want to
4 do, while maintaining the cores of
5 district, that's one of the
6 criteria, in this plan. And with
7 this plan we have accomplished that.

8 I agree with that statement to
9 the extent it was descriptive. I
10 agree with that statement to the
11 extent that it states goals. I
12 don't believe that statement was
13 intended nor would I agree with it
14 to be exclusive.

15 Q. Have you heard courts refer
16 to the one person one vote principle
17 as a background criteria for
18 redistricting as well?

19 A. Yes, ma'am.

20 Q. So you presuppose
21 compliance with one person one vote;
22 is that correct?

23 A. Yes.

24 Q. Okay. But yet it is
25 something that Will Roberts

1 TERRENI

2 identified as being a primary goal
3 alongside maintaining cores of
4 constituency when he publicly
5 introduced this staff plan on the
6 29th hearing?

7 A. Yeah. And that makes
8 sense. And I'll explain my view of
9 it at least. I don't remember the
10 specific case but I know the case
11 you are referring to in which the
12 course said well, you know, we save
13 it, you know, the one person one
14 vote standard is a backdrop of
15 whatever you just -- however you
16 just described it. In the sense
17 that it's not discretionary. But so
18 Will though as demographer says hey,
19 I complied with one person one vote,
20 I drew this plan, this one that has
21 a deviation of one.

22 Also you might say well, why
23 is that even a frontier. Well there
24 was a discretionary criteria when it
25 comes to equal population, that's

1 TERRENI

2 the 5 percent frontier. The general
3 Senate is not bound to go to a plus
4 or minus five, it could have been
5 plus or minus two, it could have
6 been something else. That wasn't
7 substantive of public concern. So
8 A, you've gotta know the criteria.
9 B, Will says it. I don't think it
10 means -- I'm not sure you need to
11 read more into it than that.

12 Q. Do you recall when
13 listening to that hearing that there
14 were concerns expressed about
15 packing and cracking black
16 communities with respect to this
17 map?

18 A. I do.

19 Q. Okay. And do you recall
20 that those concerns didn't just come
21 from the public, they came from
22 members of the subcommittee
23 including Senator Bright Matthews
24 and Senator Harpootlian?

25 A. Yes.

1 TERRENI

2 Q. Turning back to this tab 8,
3 the November 29, 2021 hearing.

4 A. Um-hmm.

5 Q. If you look at page 67,
6 lines 15 through line 69 -- I'm
7 sorry, page 67, line 15 through page
8 69, line 9, I just want you to skim
9 it.

10 A. 67 lines what?

11 Q. Line 15.

12 A. Okay.

13 Q. 69, line 9.

14 Have you had a chance to skim,
15 Mr. Terreni?

16 A. Just one second. Okay.

17 Q. This is when the public
18 first learned about Adam Kincaid?

19 A. This is when the Republican
20 subcommittee met, not Adam Kincaid.

21 Q. Yes. And looking at page
22 32, you have to go back, page 32 in
23 the top right-hand corner. And if
24 you look at lines 9 through 16, do
25 you see Senator Harpootlian on the

1 TERRENI

2 29th expressly asking for what
3 information this independent
4 Republican group, having later been
5 identified as Adam Kincaid from
6 NRRT, specifically asking for what
7 had been submitted by them?

8 A. Yes.

9 Q. Okay. And looking at page
10 35, lines 20 through 25 Senator
11 Harpootlian states at the hearing:
12 "And that's what upsets me is that
13 some independent Republican group is
14 allowed to let them know what they
15 think but I'm not. Never saw the
16 congressional plan. Never asked for
17 my input."

18 Were you surprised that he
19 made that statement?

20 A. Yes.

21 Q. Why?

22 A. Because Senator Harpootlian
23 was well aware that he had access to
24 the map room. Senator Harpootlian,
25 among the membership, was most

1 TERRENI

2 reluctant of the members to engage
3 with the staff throughout the
4 process. So for Senator Harpootlian
5 to claim that we never asked for his
6 input in my opinion didn't tell the
7 whole story because by then,
8 especially after going through the
9 Senate plan for six months,
10 everybody knew that they had access
11 to the staff and that we didn't have
12 -- they didn't have to ask for it.
13 We didn't ask for anybody's input
14 really. We needed to get a staff
15 plan in front of the subcommittee so
16 that we could have a beginning of a
17 process under which we were under a
18 time crunch. Remember, we were
19 being sued, we had a judge that was
20 -- that expressed some urgency in
21 receiving a plan. And we felt like
22 this was the beginning of the
23 process and not the end. And the
24 Republican group was not solicited
25 by us. They contacted us and by

1 TERRENI

2 then the staff plan had already been
3 done.

4 I believe Mr. Fiffick, and
5 this isn't in the transcript, but
6 during the audio session that I
7 could hear, what I recall is
8 Mr. Fiffick told him as much.

9 Q. And do you recall Senator
10 Harpootlian not being the lone
11 senator who was -- expressed
12 dissatisfaction that they had not
13 been part of the development of the
14 initial staff plan, that Senator
15 Bright Matthews also shared that
16 concern?

17 A. I do.

18 Q. Turning to the initial, the
19 House's initial draft plan. In
20 December of 2021 were you aware that
21 the House's Redistricting Ad Hoc
22 Committee was working on its first
23 staff plan?

24 A. I don't remember the dates
25 of when the House did what, but I do

1 TERRENI

2 recall that the House issued a staff
3 plan. Whether it was November or
4 December, I don't remember.

5 Q. Did you review that plan?

6 A. When they published it.

7 Q. Did you provide any input
8 on that plan?

9 A. No.

10 Q. Did you share any thoughts
11 about that plan with members of the
12 Senate staff?

13 A. I'm sure we all looked at
14 it. I'm sure we all looked at it.
15 I don't -- I remember it made some
16 substantial changes to a number of
17 districts and I remember we didn't
18 think it was something the
19 subcommittee would be interested in.

20 Q. So do you -- is it fair to
21 say that from your perspective the
22 House's initial map did not impact
23 the map that the Senate was doing,
24 the map making that the Senate was
25 doing, at least initially?

1 TERRENI

2 A. I think it was probably
3 fair.

4 Q. And were you aware that
5 after release, the House released
6 the Ad Hoc Committee released its
7 map on December 13th it held a
8 hearing on that plan on
9 December 16th?

10 A. I was aware of that.

11 Q. But you did not participate
12 or listen to that hearing?

13 A. No, ma'am, not to my
14 recollection.

15 Q. And you never reviewed a
16 transcript of that hearing?

17 A. I may have reviewed a
18 transcript at some point. I don't
19 know when it was produced. But I
20 don't -- I don't recall.

21 Q. Were you aware of when the
22 House Redistricting Ad Hoc Committee
23 released an alternative staff plan
24 on December 22nd?

25 A. I am.

1 TERRENI

2 Q. Did you review that plan?

3 A. I'm sure I did, yes.

4 Q. And like with the initial
5 Ad Hoc's plan did you first review
6 it when it was publicized or had you
7 seen it before it was publicized?

8 A. I don't believe I saw it
9 before it was publicized. I may
10 have. But at that point there was a
11 little bit more communication, not
12 between myself but mostly with
13 Mr. Fiffick. Mr. Fiffick knew more
14 about what the House was doing just
15 because he's in the General
16 Assembly. When I saw that plan, I
17 don't recall. It was -- one way or
18 another it was about the time it was
19 published.

20 Q. About the time of?

21 A. It was published.

22 Q. And if you had seen it
23 before it was published, it would
24 have come through Mr. Fiffick or
25 would you have gotten it from

1 TERRENI

2 someone on the House's staff or a
3 House member?

4 A. I would not have gotten it
5 from a House member. I would not
6 have gotten it -- I don't believe I
7 would have gotten it from anybody on
8 staff. If it were anyone it would
9 have been Patrick. But -- Patrick
10 Dennis. But I don't recall Patrick
11 Dennis showing me that. So it
12 probably -- I'm speculating. It
13 probably would have been
14 Mr. Fiffick. There are a thousand
15 ways something can make its way from
16 the Blatt building, B-L-A-T-T, to
17 the Gressete building,
18 G-R-E-S-S-E-T-E -- the Blatt
19 building being the House building,
20 House office building and the
21 Gressete building being the Senate
22 building.

23 And again, I mean I'm really
24 speculating here because I don't
25 recall seeing it before it was

1 TERRENI

2 published, but I don't want to deny
3 the possibility that I saw it before
4 it was published. The situation is
5 pretty fluid at that time.

6 Q. Were you aware that the
7 alternative staff plan that the
8 House released on December 22nd was
9 based on the Senate's initial staff
10 plan?

11 A. I'm aware that it was very
12 similar to the Senate's initial
13 staff plan. Whether it was
14 identical I'm not clear. I mean
15 given that it was very similar it's
16 logical to conclude that they based
17 it on it.

18 Q. And is that because Will
19 Roberts or someone had done an
20 analysis comparing them or is that
21 based upon your own view of the two
22 maps?

23 A. Probably both. I mean we
24 probably ran planning components
25 reports on them and, you know,

1 TERRENI

2 looked to see what was where and
3 concluded that they were very
4 similar. I could have looked at it
5 and known that. And I'm sure the
6 statistics Will ran on it bore it
7 out and I'm sure he would have run
8 them.

9 Q. Were you aware of a hearing
10 that was held on that plan on
11 December 29th by the House?

12 A. I'm aware of the House held
13 a hearing on it, yes.

14 Q. Did you participate in that
15 hearing virtually or in person
16 simultaneously or did you read a
17 transcript of it subsequent to that?

18 A. I believe I watched it
19 online.

20 Q. Did you take any
21 handwritten notes of either of the
22 hearings of on the House map on
23 December 16th or December 29th?

24 A. I don't recall.

25 Q. For the December 29th

1 TERRENI

2 hearing do you recall similar
3 concerns about the map packing and
4 cracking black voters?

5 A. I remember that there were
6 certain House members, notably
7 Representative Bernstein, who were
8 not happy with the map. I believe
9 some of those concerns may have been
10 expressed. Now I'm sure they -- I
11 believe they were, yes.

12 Q. Do you remember anyone else
13 from the House expressing concerns
14 besides Representative Bernstein?

15 A. Not specifically, although
16 I'm aware that there were other
17 members that expressed concern. I
18 just -- I recognize Representative
19 Bernstein because she's local to
20 Richland County and that's my home
21 county.

22 Q. Turning to the Senate
23 second draft plan. If you look at
24 tab 27, which should be Plaintiffs'
25 Exhibit 19.

1 TERRENI

2 A. Tab 27. I have an email
3 and some statistics, is that what
4 you are --

5 Q. Yes. This is an email from
6 John Breeden to Chip Campsen and
7 which you are copied on. It is
8 dated January 11, 2022. And it
9 attaches a Charleston and Daniel
10 Island plan comparison document. Or
11 that's the subject of the email.
12 And it's Bates stamped number South
13 Carolina Senate 22547 to 2250.

14 (Plaintiffs' Exhibit 19, Email
15 from John Breeden to Chip Campsen,
16 Bates South Carolina Senate 22547
17 to 2250, marked for identification,
18 as of this date.)

19 A. Yes.

20 Q. Do you recall this email
21 chain?

22 A. Yes. Now I do, yeah.

23 Q. Okay. Were you involved in
24 the development of the data that
25 Mr. Breeden is sharing with Senator

1 TERRENI

2 Campsen?

3 A. No, not directly. But I
4 was aware -- if it's what I think it
5 is I was aware of the request.

6 Q. What do you think it is?

7 A. Senator Campsen was
8 interested in knowing what
9 percentage of Charleston County
10 versus Berkeley County versus
11 Dorchester County was in the various
12 districts.

13 So you know, it was
14 Charleston, you know, was who had
15 the biggest or the second or third
16 biggest share of the population.
17 What were the components.

18 Q. Do you remember doing other
19 analyses like this for Senator
20 Campsen or any other senator?

21 A. Like this as in what
22 percentage of which county was
23 there, no.

24 Q. Yes.

25 A. No. I don't recall doing

1 TERRENI

2 anything else. Could have, but I
3 don't remember it.

4 Q. And looking at South
5 Carolina Senate 22550, this type of
6 analysis of the various plans, the
7 benchmark, the Senate staff plan,
8 the House Judiciary plan, the House
9 Judiciary plan Senate Amendment 1
10 that includes this breakdown of vote
11 shares for President Trump, that
12 would have been based upon the 2020
13 election?

14 A. Yes, ma'am.

15 Q. Okay. And so are you aware
16 of whether an analysis like that was
17 done for other areas in South
18 Carolina?

19 A. Well, other areas I don't
20 recall that happening, no.

21 Q. Was there a meeting, a
22 subsequent meeting about this data?

23 A. Well, if we are looking at
24 the date of this email, it would
25 have been January 11, 2022. That

1 TERRENI

2 was about the time the final
3 committee meetings were heating up.
4 So I don't know if there was this
5 specific meeting about this data.
6 But Senator Campsen was involved in
7 the plan but eventually was passed
8 by the subcommittee and was an
9 advocate of this plan and
10 subcommittee on the floor. So we
11 met with Senator Campsen on several
12 occasions.

13 Q. So turning to January 11th,
14 the Senate redistricting
15 subcommittee provided a notice that
16 it posted two proposed congressional
17 plans to be considered on January
18 13th, two dates later. Do you
19 recall that?

20 A. Yes.

21 Q. Would you agree that one
22 was an amendment by Senator
23 Harpootlian, the other was a plan
24 generated by the Senate staff?

25 A. I think at that point the

1 TERRENI

2 other was going to be a plan. It
3 may have gone beyond the staff plan.
4 It may have been a plan that was
5 sponsored by Senator Campsen and
6 Senator Rankin and Senator Campsen.
7 It was basically a majority plan.

8 Q. Who would have drawn the
9 other plan, not the Harpootlian
10 plan, but the Senator
11 Campsen-Senator Rankin plan? Would
12 Senate staff had drawn it for them
13 or would they have developed it on
14 their own?

15 A. Senate staff would have
16 drawn it for them.

17 Q. Would it be fair to say
18 that that Senator Campsen-Senator
19 Rankin plan was a modification of
20 the initial Senate staff plan?

21 A. Yes.

22 Q. And in particular the
23 Senate staff would you credit Will
24 Roberts with having developed it?

25 A. I would credit Will Roberts

1 TERRENI

2 for having produced an initial
3 draft. If you are talking about the
4 Senate staff plan, I would credit
5 the Senate staff with producing it
6 in the Senate -- developing the
7 Senate staff plan with Will acting
8 as protographer and with input
9 everyone else. But Will was the
10 prime -- had the template for that
11 claim, yes.

12 Q. Can we refer to the Senator
13 Campsen map as the Senate Amendment
14 1?

15 A. Yes.

16 Q. Would it be fair to say
17 that Will Roberts, you Mr. Terreni,
18 Breeden John, Senator Campsen,
19 Senator Rankin were involved in the
20 development of Senate Amendment 1?

21 A. Yes. In different ways but
22 yes.

23 Q. What do you mean in
24 different ways?

25 A. A Senate amendment is just

1 TERRENI

2 that. It was an amendment that is
3 sponsored by a Senate majority and
4 ultimately voted on and adopted by
5 the Senate. So in that sense it's
6 not my plan. Did I assist in its
7 development, yeah. I would say I
8 did, in providing practical or legal
9 advice regarding the plan.

10 Supporting them and advancing it.

11 But at that point it was
12 beyond the staff plan so I just want
13 to make sure by saying did we
14 participate, it was not a
15 relationship among equals.

16 Q. When you say practical
17 advice about the Senate amendment
18 plan, what's an example of what that
19 would encompass?

20 A. Well, it would encompass,
21 like, institutional recollection
22 about what maybe some members of the
23 delegation's preferences were, what
24 decisions had been made by the court
25 on the record regarding those

1 TERRENI

2 preferences of and various features
3 of the map. Features of the map
4 that were inherited from the court.

5 Q. Like with the initial staff
6 map do you know whether Senate
7 Amendment 1 was shared with Jones
8 Day before it was released to the
9 public?

10 A. Senate Amendment 1?

11 Q. Um-hmm.

12 A. Probably. Most likely.

13 Q. Can you describe briefly
14 the process for how the initial
15 Senate staff plan was modified to
16 become Senate Amendment 1?

17 A. Well, it was replaced at a
18 subcommittee. There was a hearing
19 held by the subcommittee. There was
20 public testimony on the plan,
21 various members came and inquired
22 about it, maybe shared concerns
23 about it, maybe suggested things
24 that should or shouldn't be done.
25 And ultimately the amendment

1 TERRENI

2 emerged. Maybe even the staff had
3 some ideas about how we could build
4 on it. I believe at some point we
5 understood that Berkeley County
6 could be kept whole, for instance,
7 and so we did it.

8 Q. Was that a priority to keep
9 Berkeley whole?

10 A. No, it wasn't a specific
11 priority to keep Berkeley whole.
12 No, it was just a feature.

13 Q. What were the priorities of
14 Senate Amendment 1 as far as you can
15 recall?

16 A. Well, they preserved the
17 course of the existing districts in
18 a way that most other plans didn't.
19 I think for some members there was a
20 political consideration and they at
21 least preserved the competitive
22 nature of District 1 and its
23 viability for a Republican
24 candidate. There's certainly no
25 guarantee.

1 TERRENI

2 And there were some other
3 features, like Beaufort was kept in
4 the First District with Charleston,
5 Berkeley or at least partially
6 Charleston. I mean there were -- I
7 could go on. I don't know -- you
8 tell me.

9 Q. Were there any other key
10 criteria that you think guided the
11 Senate Amendment 1?

12 A. The criteria were the
13 criteria. Was there any other key
14 input that guided Senate Amendment
15 1, there might have been. Again,
16 I'm distinguishing between criteria
17 as the criteria adopted by the
18 subcommittee and political decisions
19 that were made by the membership in
20 the development of the map. I think
21 those are two different things.

22 Q. You mentioned Sun City
23 earlier being responded to in terms
24 of that white majority area being
25 kept together in Jasper County?

1 TERRENI

2 A. Yes.

3 Q. Do you, sitting here today,
4 believe that the community in
5 Charleston was kept whole and
6 responded to in the same way as
7 those in Sun City?

8 MR. GORE: Objection.

9 Mischaracterizes his testimony.

10 A. Yeah, that's certainly not
11 my testimony.

12 Q. That's a question. Do you
13 think that --

14 A. I don't think they are
15 comparable.

16 Q. You don't think they are?

17 A. Comparable.

18 Q. How come?

19 A. We are talking about a
20 sliver of Jasper County. I don't
21 remember the specific population but
22 it was de minimis. It is part of
23 the same -- as far as I know even
24 enclosed but it's certainly the same
25 planned community that has its bulk

1 TERRENI

2 in Berkeley County so -- I mean
3 Beaufort County. So it really
4 wasn't a stretch to say we are going
5 to take Sun City and loop in this
6 little nub at the top of -- at the
7 bottom of Jasper County, top of
8 Beaufort, and keep the Sun City
9 place together. It's only -- I
10 don't know, but they certainly --
11 they have the same roads, they have
12 the same community events for its
13 connectivity. That seemed like a
14 fairly reasonable conclusion to
15 reach and it was not going to have
16 any kind of major political impact
17 on anybody one way or the other. So
18 we didn't see it as something that
19 would impact the Sixth District or
20 the First District one way or the
21 other. It was not a big enough
22 situation.

23 Charleston is very different.
24 Charleston in its current
25 configuration, you know, at least

1 TERRENI

2 the beginnings of it were drawn by
3 the United States District Court.
4 And Charleston County, as far as I
5 know, has never been unified in a
6 congressional district in, certainly
7 since single member districts maybe.
8 I stand corrected. If we go before
9 2000, my memory is fading a little
10 bit.

11 So no, I don't think there's a
12 comparison between, given the
13 peninsula of Charleston County in
14 District 1, I think they are apples
15 and oranges.

16 Q. If Charleston could be kept
17 whole in CD 1, comply with the
18 Senate's stated criteria, keep CD 7
19 untouched, largely untouched, would
20 the major political concern that
21 remains be making CD 1 not
22 Republican leading?

23 A. It's in the eye of the
24 beholder. I mean it's a -- well,
25 that's a policy decision to be made

1 TERRENI

2 by the people voting on the plans.

3 It's not for me to say.

4 MS. ADEN: Can we take a
5 five-minute so I can streamline
6 with the time that's remaining?

7 THE WITNESS: Fine with me.

8 MS. ADEN: Could we go to 5:05
9 just to be even. That would be
10 helpful.

11 THE WITNESS: Sure.

12 (Whereupon, there is a recess
13 in the proceedings.)

14 Q. If I can have you look at
15 tab 5, which is a transcription of
16 -- which is a transcription of the
17 January 13, 2022, Senate Judiciary
18 hearing transcribed by a court
19 reporter service. This would be
20 Plaintiffs' Exhibit 20. And if you
21 could turn to page 18 in the top
22 right-hand corner.

23 (Plaintiffs' Exhibit 20,
24 Transcription of 1/13/2022 Senate
25 Judiciary hearing, marked for

1 TERRENI

2 identification, as of this date.)

3 Q. Beginning at line 3.

4 A. I'm sorry, Ms. Aden, could
5 you identify what hearing is this?

6 Q. This is the January 13,
7 2022, Senate redistricting hearing.

8 A. The subcommittee?

9 Q. Yes.

10 A. And where did you want me
11 to go?

12 Q. To page 18, line 3. 18 in
13 the top right-hand corner, it's
14 South Carolina NAACP CD 19952.

15 A. Okay.

16 Q. Were you present at this
17 hearing?

18 A. I believe I was, yes.

19 Q. And you identified
20 Mr. Opperman earlier as someone who
21 worked with Senator Harpootlian, is
22 that fair?

23 A. Yes. I want to say that he
24 may have worked with some other
25 folks too. I'm not being cute, I

1 TERRENI

2 just seem to remember him maybe
3 working for more than one person, or
4 am I confusing him with someone
5 else. I know he worked with Senator
6 Harpootlian. I just thought he may
7 have submitted maps for some other
8 people.

9 Q. On lines 4 through 5 of
10 page 18, is it fair -- does it state
11 that: "I offered testimony on
12 behalf of the whole county map which
13 has been designated Senate Amendment
14 2"?

15 A. Yes.

16 Q. At any point did you review
17 and assess Senate Amendment 2?

18 A. Yeah, I'm sure I looked at
19 it and made some conclusions about
20 it.

21 Q. Do you know whether Senate
22 Amendment 2 was shared with Jones
23 Day?

24 A. Yes, ma'am.

25 Q. And was it shared with

1 TERRENI

2 Senate leadership?

3 A. Well, yeah, it was used in
4 the committee or the subcommittee.

5 Q. Leadership outside of the
6 committee.

7 A. Oh. Well, at some point
8 I'm sure it was. When and who I
9 could not tell you. I know as the
10 process went towards the floor
11 certainly other members began paying
12 attention so if you could be more
13 specific about Senate leadership. I
14 know Senator Massey was involved at
15 some point.

16 Q. If you can look, I'd like
17 you to keep tab 5 open, but if you
18 can open also tab 59, which was one
19 of the new exhibits that was
20 emailed.

21 A. Oh, I'm sorry, I need to go
22 to a different screen. I should
23 have it open then.

24 Q. Tab 59 would be Plaintiffs'
25 Exhibit 21.

1 TERRENI

2 A. All right, tab 59.

3 Q. Okay.

4 (Plaintiffs' Exhibit 21,
5 analysis of House Plan 2, Senate
6 Amendment 2A, marked for
7 identification, as of this date.)

8 Q. And tab 59 is -- would you
9 agree is an analysis of House Plan
10 2, Senate Amendment 2-A, which
11 includes various reports such as on
12 core constituencies, a partisan
13 analysis?

14 A. Yes.

15 Q. Political subdivisions
16 splits between districts?

17 A. Yes.

18 Q. Population summary?

19 A. Yes, ma'am.

20 Q. Population summary voting
21 age population, various statistics
22 and analyses related to Senate
23 Amendment 2, is that fair to say?

24 A. Yes. Yes, ma'am.

25 Q. Okay. Were these reports

1 TERRENI

2 prepared by Senate staff?

3 A. Yes.

4 Q. Of Senate Amendment 2
5 introduced by Senator Harpootlian?

6 A. Yes.

7 Q. Okay. Were reports like
8 these prepared for other plans
9 prepared by the Senate staff?

10 A. Some were, but I mean this
11 report in particular was prepared
12 for Mr. Opperman and, therefore,
13 Senator Harpootlian. I believe this
14 is the eve of the, of a subcommittee
15 meeting. Maybe we can go back and
16 look. I don't know. I know -- I
17 remember why this report was
18 prepared. It was Mr. Opperman
19 didn't have the wherewithal to
20 create these reports, and either he
21 or Senator Harpootlian asked for our
22 help in doing it and so Will ran
23 them and provided them.

24 Q. Turning back to tab 5,
25 which is the transcription of the

1 TERRENI

2 hearing from January 13th, I would
3 like you to turn to page 14, lines
4 14 through 19.

5 A. Yes, ma'am.

6 Q. Is it fair to -- does Mr.
7 Opperman state that Senate Amendment
8 2: "Clearly and unquestionably
9 complies with Section 2 of the
10 Voting Rights Act without violating
11 the 14th Amendment prohibition to
12 racial gerrymandering"?

13 A. Yes.

14 Q. Did you or anyone assess
15 whether this statement was accurate?

16 A. We didn't dispute it,
17 although -- we didn't dispute it or
18 as to the compliance with Section 2
19 of voting rights I believe we
20 disputed it. With regard to racial
21 gerrymandering I would need to
22 revisit Senate Amendment 2, but I
23 don't remember that being an
24 overriding concern.

25 Q. But is there any, as you

1 TERRENI

2 sit here today, any written analysis
3 of Senate Amendment 2 reflecting,
4 demonstrating a conclusion by you or
5 someone working at your direction
6 that Senate Amendment 2 violates the
7 14th Amendment's prohibition on
8 racial gerrymandering?

9 A. No.

10 Q. Or somehow does not comply
11 with Section 2?

12 A. No.

13 Q. Okay. On page 20, lines 4
14 through 6 he states that Senate
15 Amendment 2: "More closely adheres
16 to contiguity objectives under the
17 Committee's guidelines."

18 A. He says that.

19 Q. Did you or anyone at your
20 direction assess whether this
21 statement was accurate?

22 A. We disagreed with it.

23 Q. Did you dedicate that
24 disagreement in writing somewhere?

25 A. It's possible, but I mean I

1 TERRENI

2 think his point was we had water
3 contiguity across Charleston Harbor
4 and he obviously didn't like that,
5 and we felt it was acceptable.

6 Q. On Page 19 from line 21 to
7 page 20, line 3 Mr. Opperman remarks
8 of Senate Amendment 1 that: "By
9 having District 1 on one side of the
10 Charleston peninsula and on the
11 other side of the Charleston
12 peninsula but not connecting anyway,
13 this is just one of many examples of
14 bizarre choices that do not follow
15 traditional redistricting criteria."

16 So this is -- would you agree
17 that this is Mr. Opperman lodging an
18 objection with the way that Senate
19 Amendment 1 as compared to Senate
20 Amendment 2 achieved contiguity, at
21 least in that area of the map?

22 A. Yes.

23 Q. On page 20, lines 7 through
24 20 Mr. Opperman states that Senate
25 Amendment 2: "More closely hues to"

1 TERRENI

2 communities of interest.

3 And then on line 21 on that
4 same page, line 21 -- I'm sorry,
5 then on line 21 on that same page
6 through line 10 on page 21 does it
7 list -- do you see that he lists the
8 regions of the state that according
9 to Mr. Opperman respect communities
10 of interest?

11 A. On page 20 and 21 in the
12 paragraph beginning "As for
13 communities of interest" or --

14 Q. Yes.

15 A. Yes.

16 Q. Did you or anyone that you
17 are aware of assess whether or not
18 that was true that those communities
19 of interest were respected?

20 A. I don't know that we did it
21 formally. We certainly did it
22 informally at that process and I
23 know that we didn't agree. And that
24 the members that were allocating the
25 other plan didn't agree. We were so

1 TERRENI

2 far down -- so I mean that's -- did
3 we assess it? I mean we heard the
4 testimony. Obviously we didn't
5 agree with it. Obviously the
6 subcommittee didn't agree with it.

7 Q. But the disagreements and
8 your assessments that you talked
9 about, were those committed writing
10 that was made available to the
11 public on the record?

12 A. I don't think so.

13 Q. On page 21, lines 11
14 through 20 Mr. Opperman assesses how
15 Senate Amendment 2 preserves
16 district cores and he provides the
17 percentages of the cores of
18 districts that are retained in
19 Senate Amendment 2 as compared to
20 the 2011 benchmark map?

21 A. Yes, ma'am.

22 Q. Did you or anyone assess
23 whether these -- this data, these
24 percentages of retention that he
25 reports were accurate or not?

1 TERRENI

2 A. I believe we generally
3 confirmed them. They were a
4 comparison to the benchmark map. We
5 also compared them to Amendment 1.

6 Q. Okay. But do you have any
7 basis to disagree that his data as
8 reported here was inaccurate?

9 A. Not at this time but the
10 data speaks for itself. I don't
11 have any basis to disagree as I sit
12 in this deposition as. Far as I
13 recall these numbers were accurate.
14 Could they be a little off, they
15 might be, I don't know. We have to
16 just run the report and see.

17 Q. On page 21, lines 21
18 through 25 he states that Amendment
19 2 is preferable to the second Senate
20 staff plan or the plan passed by the
21 House because it has fewer county
22 splits.

23 A. Yes, ma'am.

24 Q. Did you or anyone assess
25 whether this statement was accurate?

1 TERRENI

2 A. As I recall, this Amendment
3 2 had fewer county splits than
4 Amendment 1. It was accurate in
5 that respect.

6 Q. And on page 22, lines 15
7 through page 23 line 5 he reports:
8 "The splits of VTDs where the
9 population is zero as compared to
10 where there are splits and no
11 population and provides explanations
12 for the split VTDs."

13 Did you or anyone assess
14 whether or not this analysis of VTD
15 splits and the reasons for them were
16 accurate?

17 A. I'm sure we did. I know we
18 did, and I believe there may have
19 been some question about his
20 explanation of the Georgetown split.
21 And others. His representation of
22 them. I know we looked at the
23 split. I don't think we had an
24 argument about how to even do the
25 VTD split. I'm not sure we -- I

1 TERRENI

2 don't -- I know that we -- there was
3 some misgiving about the Georgetown
4 split and I don't know about the --
5 I don't know about the other splits.
6 I mean --

7 Q. Do you know whether that
8 disagreement about the Georgetown
9 split was your concern about it or
10 that of anyone in the Senate
11 dedicated to written analysis for
12 the public record?

13 A. I don't believe so, no.

14 Q. On page 23, lines 6 through
15 Mr. Opperman provides additional
16 explanation for county splits and
17 why the splits are okay because of
18 the political and economic power of
19 four of the counties that are split.
20 Did you or anyone assess whether or
21 not that opinion was accurate?

22 A. I don't think it was
23 measured. To state that a county's
24 political and economic power
25 relative to the rest of the state

1 TERRENI

2 and if a country must be split,
3 having a ton of power make it more
4 easy to bear the split. You know,
5 we're medium size or small, at least
6 there's no county -- small counties
7 are split. I'd have to revisit the
8 plan to see that, but I think a
9 great deal of what he's saying here
10 is subjective. Did he split six
11 counties? As I recall, that's true.
12 Were four large, probably. The
13 rationale I don't remember one way
14 or the other.

15 Q. On page 24, lines 12
16 through 17 do you recall Senator
17 Harpootlian asking Mr. Opperman to
18 offer an analysis comparing the
19 Senate Amendment 2 plan against the
20 second Senate staff plan for the
21 Senate?

22 A. I don't specifically recall
23 that, but I know that it happened in
24 the transcript.

25 Q. Let's look at tab 3.

1 TERRENI

2 A. Okay.

3 Q. This will be Plaintiffs'
4 Exhibit 22. This is an email cover
5 from Andy Fiffick to Senator Rankin
6 and you, Mr. Terreni, dated
7 January 18, 2022, with an attachment
8 entitled Written Testimony Opperman
9 003, Bates stamped South Carolina
10 Senate 22344, 22352.

11 (Plaintiffs' Exhibit 22, Email
12 cover from Andy Fiffick to Senator
13 Rankin, et al, Bates South Carolina
14 Senate 22344, 22352, marked for
15 identification, as of this date.)

16 Q. Do you recall seeing this
17 document?

18 A. Yes.

19 Q. On 22345 does -- does the
20 title of the document Written
21 Testimony Offered to the
22 Redistricting Subcommittee of the
23 South Carolina Senate Judiciary
24 Committee regarding House Plan 2,
25 Senate Amendments 1 and 2 pursuant

1 TERRENI

2 to request on January 13, 2022.

3 A. Yes.

4 Q. Is it fair to say that
5 Mr. Opperman's testimony on
6 January 13th like in this document
7 wakes through each of the criteria
8 identified in the Senate's
9 guidelines and compares his view of
10 how Senate Amendment 2 complies with
11 each of the Senate's guidelines as
12 compared to Senate Amendment 1?

13 A. Generally speaking, yes.

14 Q. Did anyone, you or anyone
15 that you are aware of assess the
16 comparisons within it?

17 A. Yeah. I'm sure we would
18 have read Mr. Opperman's document
19 and we would have paid attention to
20 it. We would have -- I don't know
21 what you mean by assess but I mean
22 we certainly would have considered
23 it.

24 Q. Did you provide a written
25 response to this testimony?

1 TERRENI

2 A. I don't believe I
3 specifically provided a written
4 response to this testimony.

5 Q. Looking at this memo do you
6 see him reference keeping CD 7 the
7 same as in the benchmark?

8 A. If you could point to a
9 page number, that might be helpful.

10 Q. In this letter do you see
11 -- are you aware or have you looked
12 at this letter before or, as you sit
13 here today, of whether or not
14 Mr. Opperman identified keeping CD 7
15 as one of the Senate criteria by
16 which he compares his map Senate
17 Amendment 2 or Senator Harpootlian
18 Senate Amendment 2 to?

19 A. I'm sorry, do you mean is
20 one of his headings like compactness
21 minimizing, et cetera, keeping
22 related to the Senate amendment -- I
23 mean to -- it's been a long day --
24 congressional District 7 or are you
25 asking me did he discuss

1 TERRENI

2 congressional District 7 in his
3 analysis?

4 Q. Meaning looking at this
5 letter is it fair to say that he
6 looks at the Senate guidelines and
7 the categories identified in the
8 Senate guidelines and makes a
9 comparison or an evaluation from his
10 view of how Senate Amendment 2
11 complies with Senate guidelines. Is
12 that fair?

13 A. Yes.

14 Q. At the same time we have
15 been discussing all day how
16 subsequent to those guidelines or
17 around those guidelines there have
18 been other considerations
19 identified by the public, by
20 legislative members and others. Is
21 that correct?

22 A. Yes.

23 Q. But is it fair to say that
24 some of the criteria such as, or the
25 political considerations such as

1 TERRENI

2 keeping Senate -- congressional
3 District 7 whole or keeping Fort
4 Jackson in Representative Wilson's
5 district, some of these other
6 political considerations
7 Mr. Opperman does not evaluate
8 alongside these Senate guidelines.
9 Is that fair to say?

10 A. He does not appear to. It
11 doesn't mean that he didn't -- I
12 mean Mr. Opperman proposed a plan
13 that, as I recall, had all of
14 Charleston County in it, in one --
15 in Senate district -- I mean
16 Congressional District 1. And other
17 people did and then other people
18 proposed plans in Mr. Opperman's
19 plan. As I recall, we arranged
20 congressional District 7.

21 I mean people had policy
22 preferences that were additional to
23 the criteria. I don't think that
24 should be a surprise to anybody?

25 Q. Would you agree that at

1 TERRENI

2 least according to Mr. Opperman's
3 view Senate Amendment 2 complies
4 with the Senate guidelines, keeps
5 Charleston County whole in CD 1 and
6 keeps Beaufort in CD 1 and out of
7 CD 2?

8 A. I remember Charleston, I'll
9 take your word for it on Beaufort,
10 and certainly Mr. Opperman thought
11 his plan complied with the
12 guidelines.

13 Q. But there's no written
14 documenting of the Senate's view of
15 why Mr. Opperman's -- or Senator
16 Harpootlian Amendment 2 failed. Is
17 that fair to say?

18 A. Senator Harpootlian's
19 Amendment 2 failed because it didn't
20 have the votes to pass on the floor.
21 The documentation would be the floor
22 debate.

23 Q. Do you remember from the
24 floor debate a critique with how --
25 a particular critique with how

1 TERRENI

2 Senate Amendment 2 failed to address
3 one of the stated Senate guidelines
4 that had been adopted in September
5 of 2021?

6 A. Not at this time. There
7 was certainly an analysis that was
8 -- not an analysis but rather a fact
9 sheet that was provided to the
10 members that compared Senate
11 Amendment 2, the benchmark plan, and
12 Senate Amendment 1. I mean it would
13 have had things like county splits.
14 It would have had -- it would have
15 been a run down of the criteria
16 basically.

17 Q. Looking at tab 59 which is
18 -- in your email should be one of
19 the new documents. This will be
20 Plaintiffs' Exhibit 23. This is
21 South Carolina Senate 3260 to 68.

22 A. No. 3260. You are talking
23 about 59, tab 59? I have that email
24 to Will Roberts to Robert Joseph
25 Opperman at tab 59.

1 TERRENI

2 Q. Yes. And is that South
3 Carolina Senate 3260 to 326 --

4 A. I have to 368, yes, yes,
5 I'm sorry. It begins with 60 and
6 ends with 68.

7 (Plaintiffs' Exhibit 23, Email
8 from Will Roberts to Mr. Opperman,
9 Bates South Carolina Senate 3260 to
10 3268, marked for identification, as
11 of this date.)

12 Q. And this is from Will
13 Roberts to Mr. Opperman copying Andy
14 Fiffick. You are not copied on this
15 email; is that correct?

16 A. I don't appear to be, no.

17 Q. Do you recall seeing this?

18 A. As I said before, I was
19 aware that Will ran these reports
20 and I think I saw these reports,
21 yeah.

22 Q. If you can go to 3264,
23 which is pdf pages 5 of 9, there's
24 an analysis of each of the districts
25 and the share, the total number of

1 TERRENI

2 voters and the share of voters for
3 Biden as compared to Trump. Would
4 you agree?

5 A. Yes, ma'am.

6 Q. Were these types of
7 analysis done, these particular ones
8 about the vote shares in each of
9 these districts, do you remember
10 this one done for Senate Amendment
11 1?

12 A. I believe so, yes.

13 Q. Do you know if it was done
14 for the initial staff plan?

15 A. Probably.

16 Q. And do you know. Well,
17 strike that.

18 A. It may not have been
19 printed but we looked at partisan
20 numbers. Specifically these 2020
21 Trump/Biden numbers.

22 Q. And who gave you those
23 numbers or that data to do those
24 numbers, is this Vincent, Clark
25 Vincent data?

1 TERRENI

2 A. Yes, ma'am.

3 Q. On January 19, 2022, the
4 full Senate Judiciary Committee held
5 a hearing on congressional
6 redistricting. I want to ask you to
7 look at tab 25, which is an email
8 from Will Roberts to Andy Fiffick
9 dated January 16, 2022. This will
10 be Plaintiffs' Exhibit 24. And the
11 subject is analysis for Senator
12 Campsen with an attachment that says
13 notes on Senate Amendment 1.

14 (Plaintiffs' Exhibit 24, Email
15 from Will Roberts to Andy Fiffick,
16 marked for identification, as of
17 this date.)

18 A. Yes.

19 Q. Do you recall this email
20 and attached analysis?

21 A. No.

22 Q. Would an analysis such as
23 this where it appears that or would
24 you agree that Will Roberts appears
25 to have done an analysis of whether

1 TERRENI

2 Senate Amendment 1 complies with one
3 person one vote, if you look at
4 22529?

5 A. Yeah.

6 Q. And whether it adheres to
7 the Voting Rights Act?

8 A. Appears that he did that.

9 Q. And whether it avoids
10 racial gerrymandering?

11 A. He says he did.

12 Q. And whether it respects
13 contiguity or achieves contiguity
14 among districts?

15 A. Yes.

16 Q. 22560 is talking about
17 contiguity?

18 A. Yes.

19 Q. And it does an analysis of
20 communities of interest also on
21 22530?

22 A. Yes.

23 Q. And it also looked at cores
24 of existing districts on 22530?

25 A. Yes.

1 TERRENI

2 Q. And it looks at minimizing
3 splits -- whether the Senate
4 Amendment 1 minimizes splits. Is
5 that fair to say?

6 A. Yes.

7 Q. Would an analysis such as
8 this normally have gone to a leading
9 member of the Senate without counsel
10 such as yourself or Jones Day having
11 reviewed it?

12 A. I don't know that Jones Day
13 would have necessarily reviewed it.
14 One of the Senate's lawyers would
15 have reviewed it. I usually would
16 have been included in that loop.
17 I'm not sure why I wasn't. And I
18 don't remember this particular
19 document. But usually I would have
20 been copied on it. Jones Day would
21 have been different. They would not
22 have been copied on everything.

23 Q. Are you aware of a memo
24 like this being developed by Will
25 Roberts or any other Senate staff

1 TERRENI

2 regarding any other maps prepared by
3 the -- prepared or considered by the
4 Senate regarding congressional
5 redrawing of the lines?

6 A. Well, memo like this is a
7 specific format question. As I have
8 said before, there was a comparison
9 memo that was in a chart form that
10 was performed for subcommittee
11 staff, sponsors of the bill and
12 shared eventually with the entire
13 Senate membership floor debate. I
14 recall that. It would have gone
15 through -- it would have gone
16 through the criteria one by one. It
17 was not in this format.

18 Q. Would the chart that you
19 are talking about have included
20 something that made a conclusion
21 about whether a map adhered to the
22 Voting Rights Act?

23 A. It probably would have said
24 something about, to the effect that
25 the Voting Rights Act concerns

1 TERRENI

2 raised by the map. And I think we
3 would have said that about both
4 maps, Amendment 1 and 2.

5 Q. And would there have been
6 on this chart an analysis of whether
7 or not the map avoids racial
8 gerrymandering?

9 A. Analysis to the extent
10 there was a description of the
11 various mapping choices, yes -- and
12 why they, the reasons for them or
13 the physical characteristics of
14 them, yes.

15 Q. And would those and this
16 chart have gone to every member of
17 the Senate?

18 A. It did go to every member
19 of the Senate. It went to every
20 member of the Senate on the day of
21 the debate. The chart was prepared
22 the night before the debate or the
23 day before the debate in one format
24 or another. I don't know the
25 specific sequence of it but sponsors

1 TERRENI

2 and supporters of the comparison did
3 have this version of it for
4 reference during an, I think during
5 the full committee meeting.

6 Within a relatively short
7 period of time the chart went -- the
8 bill was on the floor reporting out
9 favorably for debate. And that
10 morning of the debate Senator Bright
11 Matthews requested that chart be
12 distributed or provided to all the
13 members, whether they supported the
14 amendment or not. And it was.

15 Q. Can we turn to tab 14,
16 which would be Plaintiffs' Exhibit
17 25. This is Bates stamped -- well,
18 it's an email exchange from Breeden
19 John to Andy Fiffick and certain
20 senators and it copies or it's
21 directed to you and it's dated
22 January 20th, 2022, there's a
23 subject talking points and cheat
24 sheets.

25 A. Yes, ma'am.

1 TERRENI

2 Q. And there's an attachment
3 Senate Amendment 1 Talking Points
4 2022-0120 and then there's a
5 separate attachment Plan Comparison
6 Sheets 2022-0120.

7 A. Yes, ma'am.

8 (Plaintiffs' Exhibit 25, Email
9 from Breeden John to Andy Fiffick,
10 et al, with attachment, marked for
11 identification, as of this date.)

12 Q. This tab 14, Plaintiffs'
13 Exhibit 25, is this the chart that
14 you've been referencing?

15 A. No, ma'am. But much of the
16 information is the same. This looks
17 like there's another version or
18 precursor to it. But it's not the
19 same one.

20 Q. What Breeden John is
21 sharing here to Mr. Fiffick and
22 certain legislative members, was
23 this version of information, the
24 talking points and cheat sheets, was
25 this shared with all Senate members?

1 TERRENI

2 A. I don't think so. I don't
3 know. I mean I'm looking at who it
4 was shared with and I think it was
5 shared with them, which is basically
6 leadership supporting the amendment.
7 I see Senator Campsen, Senator
8 Massey, Senator Grooms. So I don't
9 believe so.

10 Q. But not Senator Bright
11 Matthews, Senator Harpootlian or
12 Senator Sabb, members of the Senate
13 subcommittee?

14 A. No, ma'am.

15 Q. Did you help create these
16 documents?

17 A. I think this would have
18 been mostly -- I don't think so. I
19 think Breeden and Will compiled
20 these statistics. I'm not saying I
21 didn't see them when they were
22 created. I don't have the specific
23 recollection of it, but I wouldn't
24 have -- I mean the tables, for
25 instance, I would have had no --

1 TERRENI

2 they would have done that for sure.
3 So that leads us to page 1 census
4 data overview and our process so
5 far. I might have reviewed it but I
6 doubt I prepared it.

7 Q. This constituency analysis
8 on 21742 --

9 A. Yes.

10 Q. -- do you recall doing this
11 for the initial staff plan?

12 A. Not specifically, but we
13 likely did.

14 Q. Was there a point in time
15 where you started reporting -- well,
16 strike that.

17 On 21733 in the second-to-last
18 bullet it indicates that the Senate:
19 "Received more than 1,000 written
20 comments on the two amendments"
21 around January 13th of 2022?

22 A. I think it says 1,000
23 comments. Obviously that would have
24 been -- when was the date of this?
25 I'm just trying to be accurate.

1 TERRENI

2 Q. It was prepared on
3 January --

4 A. The 20th. Yeah, okay.
5 Yeah, in the last week is what it
6 says, I mean if he's talking about
7 January 13th to 20, yeah.

8 Q. Do you know whether those
9 written comments -- have you seen
10 those 1,000 written comments?

11 A. Not every one of them but
12 some of them, yes.

13 Q. And were those sent to the
14 Senate Redistricting.gov email
15 address?

16 A. They were sent to -- I
17 believe so. They were sent to an
18 address on the website that was set
19 up to receive them.

20 Q. And based upon your
21 testimony earlier today you wouldn't
22 have had direct access to all 1,000,
23 someone would have had to forward
24 you some of those emails, the ones
25 that they identified as wanting you

1 TERRENI

2 to see. Is that fair to say?

3 A. I don't recall if I had
4 direct access to them or not. As a
5 practical matter I didn't read 1,000
6 written comments. I do recall that
7 we had staff monitoring comments and
8 providing some updates on them
9 during certain periods of time. I
10 don't know if that was going on at
11 this time or not.

12 Q. As you sit here today, do
13 you know whether those thousand
14 comments were made available to the
15 public on the Senate's website?

16 A. I don't recall.

17 Q. Can we turn to tab 4, which
18 will be Plaintiffs' Exhibit 26,
19 which is an email between
20 Mr. Fiffick, Luke Rankin, copying
21 you Mr. Terreni, dated January 18th,
22 2022, with the subject, "House
23 questions distilled and clarified."
24 And it has an attachment of the same
25 name and it's Bates stamped South

1 TERRENI

2 Carolina Senate 22286 through 88.

3 You are cc'd on this email and
4 attached document.

5 (Plaintiffs' Exhibit 26, Email
6 between Mr. Fiffick, Luke Rankin
7 with attachment, Bates South
8 Carolina Senate 22286 through
9 22288, marked for identification,
10 as of this date.)

11 Q. Do you recall receiving
12 this email and attachment?

13 A. Not specifically. I'm not
14 saying I didn't, I just don't --
15 today I don't.

16 Q. Do you recall who created
17 it?

18 A. Apparently Andy.

19 Q. In the middle of page 22287
20 there is a paragraph that reads
21 committee or that's titled:
22 "Committee criteria - how was it
23 ranked and was it applied equally
24 across the board?"

25 And it reads: "Complying with

1 TERRENI

2 state and federal constitutions,
3 state and federal law such as
4 one man one vote, the Voting Rights
5 Act and avoidance of racial
6 gerrymandering and contiguity are
7 absolute requirements of equal
8 importance."

9 Do you agree that complying
10 with state constitutions is of equal
11 importance with complying with
12 federal Constitution?

13 A. No.

14 Q. Do you agree that complying
15 with state law is on the same
16 footing as complying with federal
17 law?

18 A. No.

19 Q. The next sentence reads --
20 do you agree that contiguity is on
21 equal footing as complying with the
22 federal Constitution?

23 A. No.

24 Q. And complying with federal
25 law?

1 TERRENI

2 A. No.

3 Q. And it reads: "Maintaining
4 communities of interest constituent
5 consistency, minimizing divisions of
6 city and county boundaries,
7 minimizing divisions of ETDs and
8 district compactness were all given
9 consideration in no particular order
10 of preference and applied equally
11 across all seven districts."

12 Do you agree with that?

13 A. I'm not sure what he means
14 by that. Were they applied
15 uniformly across all seven
16 districts, no. Were they applied
17 equally meaning were they all given
18 consideration, yes. I mean I think
19 you'd have to ask the author. To me
20 it's a little bit ambiguous.

21 Q. There's a paragraph or a
22 title of a paragraph that reads why
23 and, quote, unusual configuration,
24 end quote, in Charleston and why not
25 a, quote, swath, end quote -- swath,

1 TERRENI

2 S-W-A-T-H, end quote, in Charleston
3 as deposed to their, quote,
4 appearing to be a little, quote
5 again, cutting out, end quote. And
6 it responds that it was not for
7 racial reasons.

8 A. Where is this?

9 Q. This is still on --

10 A. Oh, I see it. I'm sorry, I
11 see it.

12 Q. And it further says:

13 "Members of the Charleston
14 delegation took into consideration
15 core constituency," and it
16 highlights "also need to talk to
17 Campsen as he has an opinion on
18 this."

19 Were you what a part of a
20 conversation with Senator Campsen
21 about an unusual configuration in
22 Charleston and otherwise how
23 Charleston was treated on or around
24 January 18th when this analysis was
25 sent to Senator Rankin?

1 TERRENI

2 A. It was really two
3 questions. I have no recollection
4 about discussing an unusual
5 configuration in Charleston with
6 Senator Campsen. Did I discuss
7 Charleston with Senator Campsen and
8 the First District, yeah, sure.

9 MR. GORE: Ms. Aden, I just
10 want to note for the record that
11 based on the time I have been
12 keeping, we are at six hours and
13 47 minutes. And I think the rules
14 limit the deposition to seven hours
15 so I'm just flagging that for your
16 awareness.

17 MS. ADEN: That's correct. I
18 know we are running down on time.
19 If we are off the record, can you
20 just confirm -- I think you're
21 right. I'm wrapping up. I'm not
22 going to waste the time.

23 MR. GORE: Just wanted to make
24 you aware. Sorry, go ahead.

25 MS. ADEN: Always aware of

1 TERRENI

2 time. This always goes fast.

3 Q. On page 22288 there is
4 another heading: "Was Charleston
5 split differently? Why?" And it
6 also highlights that there was lots
7 of discussion on this with Campsen
8 and we should talk about this. Were
9 you privy to any conversations with
10 Campsen about the treatment of
11 Charleston?

12 A. Yes.

13 Q. And would you agree that
14 there was at least one map
15 introduced including by Senator
16 Harpootlian or specifically by
17 Senator Harpootlian that kept
18 Charleston whole in CD 1?

19 A. Yes. That would have been
20 a different treatment than
21 Charleston.

22 Q. After the January -- before
23 the January 19th hearing were you
24 aware that in addition to Senator
25 Harpootlian other amendments were

1 TERRENI

2 introduced?

3 A. Yes.

4 Q. Did you work with any
5 senators on other amendments that
6 were -- that they wanted introduced
7 into the record?

8 A. We all did.

9 Q. And we is it the same core
10 that you had been mentioning --

11 A. Yes, ma'am.

12 Q. Would you, is your view of
13 why those amendments failed similar
14 to the view of Senator Harpootlian's
15 amendment which is they simply
16 didn't have the votes for passage?

17 A. Yes.

18 Q. As you sit here today, are
19 there, are you aware informal on any
20 reports written reports that the
21 Senate staff prepared at your
22 direction or that you are aware of
23 that critique any of the other
24 amendments that were introduced at
25 the January 19th hearing?

1 TERRENI

2 A. No. I don't think so. Let
3 me add I don't remember when those
4 memos were prepared. They may have
5 been prepared after the January 19th
6 hearing in preparation for the floor
7 debate. The dates are all a little
8 confusing to me. But what I'm
9 trying to say is the amendments may
10 have been prepared after the favor-
11 -- the subcommittee, the final
12 subcommittee report and after the
13 favorable committee report but
14 before the bill was debated on the
15 floor.

16 Q. Is it your view that it was
17 too late in the process for those
18 amendments to be successful?

19 A. No.

20 Q. Was it possible for
21 amendments as late as mid to late
22 January to be successful?

23 A. If they had the votes, I
24 mean anything could be successful.

25 MS. ADEN: I think that is

1 TERRENI

2 what I have at this time.

3 MR. GORE: Okay. Thank you.

4 I have some questions, but before I

5 ask my questions either,

6 Mr. Mathias or Ms. Trinkley, would

7 you like to ask anything?

8 MR. MATHIAS: I have no

9 questions.

10 MS. TRINKLEY: I have no

11 questions either. Thank you,

12 Mr. Terreni.

13 THE WITNESS: Mr. Gore, I'm

14 going to ask you, what do you have,

15 a couple hours or --

16 MR. GORE: Yeah, I was

17 thinking three or four actually.

18 THE WITNESS: Okay. I need

19 two minutes.

20 MR. GORE: Let's take a couple

21 minute break.

22 (Whereupon, there is a recess

23 in the proceedings.)

24 EXAMINATION BY

25 MR. GORE:

1 TERRENI

2 Q. Mr. Terreni, I'd like to
3 call your attention back to the
4 document you were just discussing
5 with Ms. Aden, tab 4, Plaintiffs'
6 Exhibit 6 [sic].

7 Do you have that in front of
8 you?

9 A. I can get it.

10 Yes.

11 MS. ADEN: You said 6, did you
12 mean 26.

13 MR. GORE: Yes. Exhibit 26,
14 tab 4. Thank you.

15 A. Yes, sir.

16 Q. I believe you said that
17 making Charleston whole also would
18 have been different treatment of
19 Charleston County. Is that right?

20 A. Yes.

21 Q. And why is that the case?

22 A. Because Charleston County
23 was split in the prior plan enacted
24 in 2011, I guess. It was split in
25 the core plan that was drawn by the

1 TERRENI

2 core in 20 -- I think it was 2000
3 and it was, I believe it had been
4 divided in the previous plan. I
5 know it had. I know it had.

6 I'm sorry, it was divided in
7 the plan in the '90s and I think in
8 the age of single member districts
9 it always has been.

10 Q. I'm referring again to this
11 document, Exhibit 26, tab 4. Do you
12 know whether this document was
13 reviewed, used or relied upon by
14 anyone?

15 A. I don't know that, no.

16 Q. Mr. Terreni, have you
17 discussed this litigation at all
18 with Dale Oldham?

19 A. No.

20 Q. Mr. Terreni, will you turn
21 back to tab 5, Plaintiffs' Exhibit
22 21. This is the transcript of the
23 June 13th, 2022, redistricting
24 subcommittee meeting?

25 A. Yes. Bear with me, I need

1 TERRENI

2 to close some tabs here. Tab 5,
3 yes, sir.

4 Q. Will you scroll down to
5 page 21.

6 A. Yes, sir.

7 Q. You and Ms. Aden discussed
8 these core preservation numbers for
9 Senate Amendment 2. Do you recall
10 how these preservation numbers
11 compare to the core preservation
12 numbers in Senate Amendment 1?

13 A. They are all lower,
14 significantly so.

15 Q. Can you turn with me now to
16 tab 17, Plaintiffs' Exhibit 14.

17 A. Can you share it?

18 Q. Yes, I can share it.

19 A. Which tab was it?

20 Q. It's tab 17. Can you see
21 it on my screen now?

22 A. I can and I'm going to see
23 if I can open it now. I have it,
24 yes.

25 Q. This is the letter that

1 TERRENI

2 Ms. Aden drafted on behalf of the
3 NAACP and perhaps related entities
4 and sent to the redistricting
5 subcommittee on October 8th. And if
6 we scroll to page 10 of the pdf,
7 there's a discussion about racially
8 polarized voting analysis and racial
9 bloc voting. Do you recall
10 discussing this with Ms. Aden
11 earlier today?

12 A. Yes, sir.

13 Q. She had you read the first
14 sentence here about racial bloc
15 voting. I'd like to call your
16 attention -- that sentence ends in
17 footnote 24. And I'd like to call
18 your attention to footnote 24 at the
19 bottom of the page.

20 A. Footnote 24 or 34?

21 Q. Yes, 24.

22 A. I'm sorry, what page are we
23 on?

24 Q. It's page 10 of the pdf.

25 It's --

1 TERRENI

2 A. Oh, page 8 of the --

3 Q. 8 of the letter. SC Senate
4 3807 is the Bates number?

5 A. I see it now. I'm sorry.

6 Q. And are you familiar with
7 the four cases cited in this
8 footnote?

9 A. I can't say that I remember
10 Collins versus City of Norfolk. The
11 North Carolina case, yes. And
12 Gingles obviously. And Johnson
13 versus De Grandy I remember.

14 Q. Whether or not you are
15 familiar with these cases, are all
16 of these cases Section 2 cases?

17 A. Gingles was the case I
18 believe it was. I don't know about
19 Collins. Yeah, they say they are
20 Section 2 cases. I'm sorry.

21 Q. Does the parenthetical
22 after Collins indicate that Collins
23 was a Section 2 case?

24 A. Yes.

25 Q. And was De Grandy a Section

1 TERRENI

2 2 case?

3 A. I think so.

4 Q. You and Ms. Aden spent a
5 significant amount of time today
6 discussing the Voting Rights Act.
7 Had the plaintiffs brought a Section
8 2 claim in this case?

9 A. No, sir.

10 Q. Has the General Assembly
11 asserted a Section 2 defense in this
12 case?

13 A. No, sir.

14 Q. We will turn away from this
15 letter for a moment. I'm going to
16 ask you a question and then point
17 you to another document. I believe
18 you and Ms. Aden discussed Sun City.
19 Do you recall that discussion?

20 A. I do.

21 Q. And you testified that Sun
22 City is a majority white community;
23 is that right?

24 A. That's my understanding.

25 Q. And is the fact that Sun

1 TERRENI

2 City is majority white the reason
3 that the Sun City community was kept
4 together in the enacted plan?

5 A. No, sir, it was not.

6 Q. And what was the reason it
7 was kept together?

8 A. It was a part of the same
9 development. We had an individual
10 testify, didn't make any sense, that
11 at least one individual testified
12 very passionately but it didn't make
13 any sense to keep a district line
14 running through his neighborhood
15 that didn't include him with -- in
16 the same district as his neighbors.

17 I'm aware that Sun City is a
18 large development on the outskirts
19 of Beaufort and in its expansion I
20 believe it reached into Jasper
21 County. So we kept Sun City whole,
22 so to speak. That was the point of
23 the change.

24 Q. Do you know whether Senator
25 Margie Bright Matthews supported

1 TERRENI

2 keeping Sun City whole?

3 A. I don't recall.

4 Q. You and Ms. Aden spent a
5 fair amount of time discussing Adam
6 Kincaid in the National Republican
7 Redistricting Trust. Do you recall
8 that?

9 A. Yes, sir.

10 Q. Do you recall she showed
11 you a transcript where Senator
12 Harpootlian expressed that he wanted
13 to see the National Republican
14 Redistricting Trust plans, do you
15 recall that?

16 A. Yes, sir.

17 Q. Do you know whether those
18 plans were ever provided to Senator
19 Harpootlian?

20 A. Yes. It's my understanding
21 they were.

22 Q. Mr. Terreni, can you open
23 tab 59, which is Exhibit 21?

24 A. Yes.

25 Q. This is the series of

1 TERRENI

2 reports that Will Roberts generated
3 for the Harpootlian plan; is that
4 correct?

5 A. Tab 29.

6 Q. 59.

7 A. Sorry. I have to open
8 another tab.

9 Yes sir.

10 Q. And turning to page 5 of
11 the pdf do you see vote totals and
12 percentages for Joe Biden and Donald
13 Trump for each district?

14 A. I do.

15 Q. And do you know whether
16 this data was provided for other
17 plans on the Senate redistricting
18 website?

19 A. I believe it was.

20 Q. And would that include
21 Senate Amendment 1?

22 A. I believe so.

23 Q. Did it include other
24 proposed plans?

25 A. Yes, sir. At the time --

1 TERRENI

2 yes. At the time of the amended,
3 yes, was my recollection.

4 Q. Mr. Terreni, I want to ask
5 you a few questions about Jones Day,
6 which has been mentioned in today's
7 deposition. I believe you said that
8 one of the lawyers at Jones Day who
9 you spoke with has the first name
10 Stewart. Do you remember that?

11 A. Yes, sir.

12 Q. Is it possible that his
13 last name is Crosland,
14 C-R-O-S-L-A-N-D?

15 A. Yes. Now that you mention
16 it, it is. He obviously wasn't
17 Stewart Copeland or apparently
18 wasn't Stewart Copeland with all
19 deference to the band member.

20 Q. What was Jones Day's role
21 in South Carolina redistricting this
22 cycle?

23 A. Providing legal advice to
24 the South Carolina Senate,
25 specifically the Redistricting

1 TERRENI

2 Committee and the chairman of the
3 Senate Judiciary Committee and his
4 staff as instructed and then later
5 defending the Senate against this
6 lawsuit.

7 Q. Do you know whether Jones
8 Day provided legal advice on both
9 Senate and congressional
10 redistricting?

11 A. Yes.

12 Q. And did it do so?

13 A. Yes.

14 Q. Did Jones Day do anything
15 in redistricting other than
16 providing legal advice?

17 A. No.

18 Q. When you provided
19 information to Jones Day or asked
20 Jones Day to conduct a review, what
21 was your purpose in soliciting Jones
22 Day's involvement?

23 A. To assess the legality,
24 defensibility of a -- or
25 defensibility of a plan in

1 TERRENI

2 litigation. In other words, we
3 wanted to know whether, A, it
4 complied with federal law.
5 Generally state law wasn't a
6 question, but it could have been I
7 suppose. And, B, in anticipation of
8 litigation how our exposure to the
9 likelihood of a lawsuit and the
10 possible defenses and claims that
11 might be brought.

12 Q. Is it fair to say that your
13 purpose in soliciting Jones Day's
14 input was to seek legal advice?

15 A. Yes.

16 Q. Did you have any other
17 purpose?

18 A. No.

19 Q. I believe you testified
20 that the plans provided and posted
21 on the website were available to
22 anybody in the world; is that
23 correct?

24 A. Anybody with a computer.

25 Q. Those plans would have been

1 TERRENI

2 available to Jones Day from the
3 website as well, correct?

4 A. Correct.

5 Q. Do you know whether anyone
6 ever conveyed maps, plans or data to
7 Jones Day separate from the website?

8 A. Yes.

9 Q. Do you know whether anyone
10 sent any of the National Republican
11 Redistricting Trust maps to Jones
12 Day?

13 A. I think we did. I don't
14 remember specifically, but we may
15 have. We didn't spend a lot of time
16 with those maps, Mr. Gore. I don't
17 remember if I sent them to you or
18 not.

19 Q. I want to ask you a few
20 questions about Robinson Gray as
21 well. I believe you testified that
22 Robinson Gray became involved in
23 this matter after litigation was
24 filed; is that correct?

25 A. Correct.

1 TERRENI

2 Q. Did Robinson Gray provide
3 any legal advice on the drawing of
4 the congressional plan?

5 A. I don't recall them doing
6 that. I think they were only
7 engaged after the Senate was sued or
8 maybe once we were -- well, no the
9 Senate was sued early on so there
10 wasn't overlap. I don't recall
11 Robinson Gray providing advice on
12 the maps.

13 Q. Did Robinson Gray draw any
14 redistricting maps?

15 A. No.

16 Q. Did Robinson Gray direct
17 the drawing of any redistricting
18 maps?

19 A. No.

20 Q. Did Jones Day draw any
21 redistricting maps?

22 A. No.

23 Q. Did Jones Day direct the
24 drawing of any redistricting maps?

25 A. No.

1 TERRENI

2 Q. Mr. Terreni, I'd like to
3 get a little more clarity on your
4 role in the redistricting process.
5 Did you draw any redistricting maps?

6 A. No.

7 Q. Did you draw any
8 redistricting lines?

9 A. No.

10 Q. Did you dictate the drawing
11 of any maps or lines?

12 A. No.

13 Q. So today if you testified
14 that "we" drew a plan, did you
15 meaning to include yourself in the
16 "we" who drew the plan?

17 A. Not in the sense of drawing
18 it. And if I said that, I was being
19 inartful and I appreciate you
20 pointing it out, Mr. Gore.

21 Q. So what did you mean by
22 that?

23 A. What I meant was the Senate
24 redistricting staff and specifically
25 the members -- and the members of

1 TERRENI

2 the Senate drew a plan. Some
3 members of the Senate came in and
4 said I want to see this or that done
5 and I would like that include in the
6 amendment and ultimately -- well,
7 ultimately it's the senator and
8 Senate that draws the plan, it's not
9 staff, but the staff can certainly
10 go through the mechanics of it, the
11 staff drew a staff plan.

12 Did I draw it specifically,
13 no. Was I present while it was
14 being drawn, yes. Did I facilitate
15 the process, yes. Did I dictate
16 where a line went or not, no. Did I
17 convey some institutional knowledge
18 about the preferences of different
19 members or the congressional
20 delegation, yes.

21 Q. Who is the decision-maker
22 as to which plan would be enacted?

23 A. The Senate.

24 Q. Mr. Terreni, can you open
25 tab 1, Plaintiffs' Exhibit 7?

1 TERRENI

2 A. Yes, sir.

3 Q. This is the 2021 policy for
4 public plan submissions. Do you
5 recall discussing this with Ms. Aden
6 today?

7 A. I do.

8 Q. Paragraph 2 of this
9 document, the first sentence of that
10 paragraph reads: "The redistricting
11 subcommittee will designate a time
12 period during which it will accept
13 redistricting plans for review and
14 consideration."

15 Did I read that correctly?

16 A. You did.

17 Q. Did the subcommittee
18 designate a time period for
19 accepting plan submissions?

20 A. It did.

21 Q. Were any of the plans
22 emailed by the National Republican
23 Redistricting Trust provided before
24 that deadline?

25 A. No.

1 TERRENI

2 Q. Is that the reason why
3 those plans were not posted on the
4 website?

5 A. Yes. I mean that's --
6 yeah. I mean they were sent to us
7 at the last minute, we looked at
8 them. There wasn't a subcommittee
9 hearing for anybody to comment on.
10 We didn't use them, we didn't
11 consider them and so we didn't post
12 them. I'm not sure a lot of thought
13 was given it to, Mr. Gore.

14 Q. Let me point your attention
15 to paragraph I-B. And the first
16 part of I-B reads: "All plans
17 submitted to and accepted by the
18 redistricting subcommittee will be
19 made part of the public record and
20 will be made available in the same
21 manner as other redistricting
22 subcommittee public records."

23 Did I read that correctly?

24 A. You did.

25 Q. Were the National

1 TERRENI

2 Republican Redistricting Trust plans
3 ever accepted by the redistricting
4 subcommittee within the meaning of
5 this document?

6 A. No, sir.

7 Q. Why not?

8 A. Because they were never
9 accepted and brought before the
10 subcommittee for public testimony
11 and for questions by the members of
12 the subcommittee. They were not
13 presented to the subcommittee.

14 Q. Do you know whether any
15 member of the subcommittee or any
16 member of the Senate ever saw those
17 plans?

18 A. Before or after the
19 subcommittee?

20 Q. Either.

21 A. Before no. Afterwards upon
22 request I believe Senator
23 Harpootlian saw them. I don't
24 believe anybody else wanted to see
25 them.

1 TERRENI

2 Q. Did it violate any Senate
3 redistricting subcommittee policy or
4 this document for you and others to
5 look at the National Republican
6 Redistricting Trust plans?

7 A. No, sir.

8 Q. Mr. Terreni, can you turn
9 to tab 45, Plaintiffs' Exhibit 11?

10 A. Yes, sir.

11 Q. Is this the subpoena that
12 was served on you in this case?

13 A. Yes.

14 Q. And do you recall earlier
15 today discussing with Ms. Aden some
16 handwritten notes you took of public
17 hearings in 2021?

18 A. Yes, sir.

19 Q. Can you scroll down to page
20 11 of this exhibit?

21 A. Yes, sir.

22 Q. This is Request For
23 Production No. 1 towards the bottom
24 of the page. Calls for "all
25 documents you provided to

1 TERRENI

2 defendants, committee members or the
3 South Carolina General Assembly or
4 communications between you and
5 defendants committee members or the
6 South Carolina General Assembly."

7 Did you ever provide your
8 handwritten documents to defendants,
9 committee members or the South
10 Carolina General Assembly?

11 A. No, sir.

12 Q. Were your handwritten notes
13 communications between you and
14 defendants, committee members or the
15 South Carolina General Assembly?

16 A. No.

17 Q. Would you scroll down to
18 the next page, page 12 of the
19 document, page 15 of the pdf.

20 A. Yes, sir.

21 Q. Request For Production 2
22 calls for "all correspondence and
23 documents you received from Mr. Adam
24 Kincaid, the National Republican
25 Redistricting Trust, Fair Alliance

1 TERRENI

2 America, Magellan Consulting or
3 anyone else."

4 Were your handwritten notes --
5 did I read that correctly?

6 A. Yes, sir.

7 Q. Were your handwritten
8 notes, correspondence or documents
9 you received from Mr. Kincaid, the
10 National Republican Redistricting
11 Trust, Fair Alliance America,
12 Magellan Consulting or anyone else?

13 A. No, sir.

14 Q. Scroll down to Request For
15 Production No. 3. This one asks
16 again for "all documents you
17 provided to or received from
18 defendants, committee members or the
19 South Carolina General Assembly and
20 communications between you and
21 defendants, committee members or the
22 South Carolina General Assembly
23 relating to the following hearings."

24 Did I read that correctly?

25 A. You did.

1 TERRENI

2 Q. Were your handwritten notes
3 documents you provided to or
4 received from defendants, committee
5 members or the South Carolina
6 General Assembly?

7 A. No, they were not.

8 Q. Were your handwritten notes
9 communications between you and
10 defendants, committee members or the
11 South Carolina General Assembly?

12 A. No, sir.

13 Q. Let's scroll to the next
14 page, which is the final of the
15 subpoena Request For Production No.
16 4. This request calls for "all
17 documents concerning any retainer
18 agreement, fee agreement or any
19 other contract or agreement between
20 you and defendants, committee
21 members or the South Carolina
22 General Assembly."

23 Did I read that correctly?

24 A. You did.

25 Q. Were your handwritten

1 TERRENI

2 notes, documents concerning any
3 retainer agreement, fee agreement or
4 any other contract or agreement
5 between you and defendants,
6 committee members or the South
7 Carolina General Assembly?

8 A. No, sir.

9 Q. Mr. Terreni, will you now
10 turn to tab 18, which is Plaintiffs'
11 Exhibit 16.

12 A. Yes, sir.

13 Q. This is the email from
14 Breeden John to recipients at
15 alliance.law; is that correct?

16 A. Correct.

17 Q. And there is an attachment
18 here of various races and vote
19 totals in South Carolina; is that
20 right?

21 A. Yes, sir.

22 Q. Now, I believe you may have
23 testified that this attachment was
24 made available on the website; is
25 that right?

1 TERRENI

2 A. I believe it was.

3 Q. Is it possible that this
4 attachment was too large to be
5 posted on the website and that
6 instead information about how to
7 request this document was posted on
8 the website?

9 A. Yes. That's possible. As
10 a matter of fact, now that you ask
11 me that question I remember that was
12 the case.

13 Q. But this document was
14 available to the public upon
15 request; is that right?

16 A. Yeah. Yeah. All we needed
17 to do was email or prepare it with
18 Alliance.

19 Q. Earlier today you and
20 Ms. Aden discussed a racially
21 polarized voting analysis. Do you
22 recall that?

23 A. Yes, sir.

24 Q. And you shared your view as
25 to why such an analysis was not

1 TERRENI

2 helpful or required for the
3 congressional redistricting plan; is
4 that correct?

5 A. Correct.

6 Q. Is that a view that you
7 shared publicly on the record in a
8 subcommittee hearing?

9 A. Yes, sir.

10 Q. Mr. Terreni, can you turn
11 now, open tab 1, which is
12 Plaintiffs' Exhibit 9?

13 A. Yes, sir.

14 Q. And this is the email from
15 Paula Benson to Senator Campsen
16 copying others that attaches, among
17 other things, the Senate guidelines,
18 correct?

19 A. Yes, sir.

20 Q. So I'd like to call your
21 attention to the Senate
22 redistricting guidelines.

23 A. Yes, sir.

24 Q. Do these guidelines say
25 anything about reunifying Charleston

1 TERRENI

2 County in the enacted plan?

3 A. No, sir.

4 Q. Do they say anything about
5 reunifying Richland County in the
6 enacted plan?

7 A. No, sir.

8 Q. How about Sumter County?

9 A. No, sir.

10 Q. How about Orangeburg
11 County?

12 A. No, sir.

13 Q. Do these guidelines say
14 anything about conducting a racially
15 polarized voting analysis?

16 A. No, sir.

17 Q. Do they direct the Senate
18 or Senate staff to conduct a
19 racially polarized voting analysis?

20 A. No, sir.

21 Q. Mr. Terreni, for how many
22 cycles have you been involved in
23 redistricting in South Carolina?

24 A. This was my third.

25 Q. And based on that

1 TERRENI

2 experience and your involvement this
3 time around, do you believe there's
4 any basis in this record to conclude
5 that the enacted congressional plan
6 is a racial gerrymander?

7 A. No, sir.

8 Q. And based again on that
9 experience and your own involvement
10 in congressional redistricting this
11 time around, do you believe there's
12 any basis in this record to conclude
13 that the enacted congressional plan
14 is the result of intentional racial
15 discrimination?

16 A. No, sir.

17 MR. GORE: Thank you,
18 Mr. Terreni, I have no further
19 questions at this time.

20 MS. ADEN: I have a very few
21 for redirect.

22 BY MS. ADEN:

23 Q. Mr. Terreni, you were asked
24 about Charleston County's treatment
25 in prior maps and also testimony of

1 TERRENI

2 one person in Sun City. Do you
3 recall hearing testimony from
4 members of the public about keeping
5 Charleston County whole even if it
6 had been split in previous maps?

7 A. I do.

8 Q. Would you agree that more
9 people testified in support of
10 keeping Charleston County whole than
11 compared to the treatment of Sun
12 City?

13 A. Yes.

14 Q. Looking at the Senate
15 redistricting criteria adopted on
16 September 17th, under Additional
17 Considerations is one of the
18 criteria that should be considered
19 keeping counties whole, maintaining
20 counties?

21 A. It's -- one of the criteria
22 is minimizing of county boundaries.

23 Q. And so minimizing the
24 splits of counties, including
25 Charleston, would thus comply with

1 TERRENI

2 that additional criteria in the
3 Senate guidelines; is that correct?

4 A. It could.

5 Q. You were asked about the
6 four cases in the footnote of the
7 South Carolina NAACP letter in tab
8 17, Plaintiffs' Exhibit 14.

9 A. Yes, ma'am.

10 Q. One of those included a
11 McCrory case out of North Carolina.
12 Do you recall that?

13 A. Yes, ma'am.

14 Q. And you recall being
15 familiar with that case?

16 A. I read the opinion.

17 Q. Do you have any reason to
18 dispute that that case in addition
19 to having a Section 2 claim also had
20 an intentional vote discrimination
21 claim?

22 A. I don't have any reason to
23 dispute it. I don't recall.

24 Q. Do you have any reason to
25 dispute that the basis for why the

1 TERRENI

2 plaintiffs sought bail-in under
3 Section 5 of the Voting Rights Act
4 was because of a constitutional
5 violation?

6 A. That may have been -- no, I
7 don't have any reason to dispute
8 that.

9 Q. So it's possible that that
10 McCrory case -- in fact, I'm
11 representing that the McCrory case
12 had more than Section 2 claims. Do
13 you have any reason to dispute that?

14 A. No.

15 Q. You had mentioned that --
16 your understanding that Senator
17 Harpootlian received the documents
18 that Adam Kincaid sent to
19 Mr. Fiffick. Did you personally
20 send Senator Harpootlian the
21 information received from NRRT?

22 A. No.

23 Q. And did you personally
24 receive confirmation that the
25 material that Andy Fiffick received

1 TERRENI

2 from NRRT was shared with Senator
3 Harpootlian?

4 A. I received confirmation
5 that it was offered to him at the
6 very least. Whether Senator
7 Harpootlian accepted that offer I
8 can't personally say. I assume that
9 he did.

10 Q. Do you know who offered the
11 information to Senator Harpootlian?

12 A. Andy Fiffick.

13 Q. Do you know whether Senator
14 Bright Matthews asked for the
15 information from NRRT?

16 A. I do not.

17 Q. Do you know who Senator
18 Kimpson is?

19 A. I do.

20 Q. Is he a lawyer?

21 A. He is.

22 Q. And you were asked for your
23 opinion about whether or not the
24 enacted map is a racial
25 gerrymandering. Do you recall that?

1 TERRENI

2 A. By Senator Kimpson?

3 Q. No. By Mr. Gore on his
4 questioning.

5 A. Yes, ma'am.

6 Q. Do you have any reason to
7 dispute that on January 20, 2022,
8 during the Senate floor hearing
9 Senator Kimpson characterized Senate
10 Amendment 1 as a racial gerrymander?

11 A. I have no reason to dispute
12 that, that that was his
13 characterization, no.

14 Q. You mentioned when speaking
15 with Mr. Gore that you provided --
16 you did not -- that you did not
17 develop, you yourself did not
18 develop congressional redistricting
19 maps, is that fair?

20 A. Draw, I think the word was
21 "draw" but develop I wouldn't
22 dispute that.

23 Q. But you personally do not
24 draw congressional redistricting
25 maps, is that your testimony?

1 TERRENI

2 A. Correct, yes.

3 Q. But you testified that you
4 provided institutional knowledge on
5 those maps, is that fair to say?

6 A. Yes.

7 Q. Okay. You also mentioned
8 earlier today that you provided
9 information to Mr. Roberts, Will
10 Roberts, is that fair to say, as he
11 was developing at least the initial
12 step plan and potentially other
13 congressional maps for the staff, is
14 that fair to say?

15 A. On some occasions, yes.

16 Q. And Mr. Roberts is a
17 cartographer as you've described
18 him, is that fair to say?

19 A. Yes.

20 Q. Is he a lawyer?

21 A. No.

22 Q. Do you think when you were
23 providing information to Mr. Roberts
24 you were providing him with legal
25 advice?

1 TERRENI

2 A. On occasions, yes.

3 Q. Were there occasions such
4 as when you were providing him
5 institutional knowledge about past
6 redistricting decisions that those
7 would have been fact-based
8 information?

9 A. Yes.

10 MS. ADEN: I think those are
11 all of my questions. The only
12 thing I'd like to put on the
13 record, Mr. Gore, is that we would
14 like to hold this deposition open
15 pending our continued review of the
16 subpoena and the testimony today
17 about whether or not all
18 information that was asked to be
19 produced by the Senate has been
20 provide and we will talk internally
21 as a team and may follow up with
22 you, but until such time we'd like
23 to hold the deposition open for
24 that purpose.

25 MR. GORE: Noted. We

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TERRENI

obviously object to holding the deposition open. This deposition has gone the full seven hours allowed by the rules and more.

I think it's also clear based on the deposition testimony that the handwritten notes were not within the scope of the subpoena. So we do object to holding this open.

We, of course, are happy to hear from you if you'd like to discuss any production issues or document issues that you think may have been arisen, but we do note for the record that we object to holding the deposition open for the reasons stated.

MS. ADEN: And I think we can go off the record.

(Time noted: 6:47 p.m.)

STATE OF NEW YORK)
) ss
COUNTY OF NEW YORK)

I, CHARLES TERRENI, the witness
herein, having read the foregoing
testimony of the pages of this
deposition, do hereby certify it to be a
true and correct transcript, subject to
the corrections, if any, shown on the
attached page.

CHARLES TERRENI

Sworn and subscribed to before me,
this _____ day of _____, 2022.

Notary Public

1
2 STATE OF NEW YORK)

3 ss.:

4 COUNTY OF NEW YORK)

5
6 I, ERICA L. RUGGIERI, RPR and a
7 Notary Public within and for the State
8 of New York, do hereby certify:

9 That I reported the proceedings
10 in the within-entitled matter, and
11 that the within transcript is a true
12 record of such proceedings.

13 I further certify that I am not
14 related by blood or marriage, to any
15 of the parties in this matter and
16 that I am in no way interested in the
17 outcome of this matter.

18 IN WITNESS WHEREOF, I have
19 hereunto set my hand this 23rd day of
20 August, 2022.

21 

22 -----
23 ERICA L. RUGGIERI, RPR, CSR, CLR
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INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

E R R A T A

I wish to make the following changes, for
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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